

STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No. 97-AFC-1
)	
Application for Certification)	
for the High Desert Power Project)	
_____)	

COMMITTEE CONFERENCE

California Energy Commission
1516 Ninth Street
First Floor Hearing Room A
Sacramento, California 95814

Wednesday, May 20, 1998
10:00 a.m. to 2:11 p.m.

Reported and Transcribed by: Ramona Cota

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A P P E A R A N C E S

Commissioners Present:

JANANNE SHARPLESS, Presiding Member

ROBERT A. LAURIE

Staff Present:

STANLEY W. VALKOSKY, Chief Hearing Officer

ROBERTA MENDONCA, Public Adviser

ROSELLA SHAPIRO, Advisor to Commissioner Sharpless

For the Staff of the Commission:

RICHARD K. BUELL, Siting Project Manager

CARYN J. HOUGH, Senior Staff Counsel

TUAN NGO, P.E.

ELLEN TOWNSEND-SMITH

CHRISTOPHER TOOKER, Ph.D.

For the Applicant:

MICHAEL J. CARROLL, Latham & Watkins

AMY CUELLAR, RMI

ALLAN J. THOMPSON, Law Office of Allan J. Thompson

ANDREW C. WELCH, P.E., High Desert Power Project LLC

R.L. (RICK) WOLFINGER, High Desert Power Project LLC

A P P E A R A N C E S (C O N T I N U E D)

For the Intervenor:

MARC D. JOSEPH, Adams Broadwell & Joseph
On behalf of California Unions for Reliable Energy (CURE)

For the Public:

OSCAR HELLRICH, Mojave Desert Air Quality Management District
ALAN DE SALVIO, Mojave Desert Air Quality Management District

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P R O C E E D I N G S

WEDNESDAY, MAY 20, 1998 SACRAMENTO, CALIFORNIA 10:11 A.M.

COMMISSIONER SHARPLESS: Good morning, I'd like to welcome you all to the Energy Commission's Committee Conference on the High Desert Power Project. I'd like to start with introductions. To my left is Commissioner --

COMMISSIONER LAURIE: Moore.

COMMISSIONER SHARPLESS: Laurie. I'm sorry, Bob, I'm having a little problem here this morning. Commissioner Laurie. To his right is Stan Valkosky who is the Hearing Officer for this project. I am the Presiding Member, Jananne Sharpless, at least I remember my name. I'd like to go through introductions of the parties starting with the applicant and going around the table. Would you like to start, please.

MR. CARROLL: Yes. Mike Carroll with Latham and Watkins on behalf of the applicant.

MR. WOLFINGER: Rick Wolfinger, Project Manager, High Desert Power Project.

MR. THOMPSON: Allan Thompson on behalf of the applicant.

MR. BUELL: Rick Buell, Energy Commission Staff, Project Manager.

MS. HOUGH: Caryn Hough, Staff Counsel.

MR. JOSEPH: Marc Joseph on behalf of the

1 California Unions for Reliable Energy.

2 COMMISSIONER SHARPLESS: Thank you very much. As I
3 said, this is one of the many Committee Conferences that we
4 have scheduled to look at the status and progress of this
5 project. This particular public conference was scheduled in
6 a notice that was Dated May 4th so hopefully you all received
7 that.

8 Today's conference will provide each party an
9 opportunity to inform the Committee on the status of the High
10 Desert case, including any potential delays; to update the
11 Committee regarding the status of information still needed
12 for the analysis of various topic areas; and third, discuss
13 out-scheduling and any other matters relevant to the
14 proceedings. We have our Public Adviser in the back of the
15 room, Roberta Mendonca, and she has blue cards for those of
16 you in the audience that would like to at some point in time
17 comment on any of the topics that we will be discussing
18 today.

19 In its May 4th Notice and Order the Committee
20 specified due dates for the submission of various information
21 and directed the parties to propose scheduling alternatives,
22 which would include completion of the analyses for various
23 topic areas. The Committee would prefer that the applicant,
24 then staff, then CURE summarize their concerns in each
25 individual topic area, then we'll have an opportunity to do a

1 round table discussion.

2 We will begin with the topic of Transmission
3 followed in turn by Water and then other topics including the
4 Department of Toxic Substance Control permits, the second
5 natural gas pipeline and finally Air Quality. We have
6 reversed somewhat from what we did the previous time. After
7 these topical areas are discussed each party will have an
8 opportunity to address the scheduling concerns. So unless
9 there are any other questions by the parties here we can
10 begin. Perhaps we can start with the applicant discussing
11 the status of the transmission study.

12 **TRANSMISSION**

13 MR. WOLFINGER: I'd like to ask Andy Welch my
14 Project Director, he was with Southern California Edison
15 yesterday, to address that.

16 MR. WELCH: Just briefly, the draft of that report
17 was finished and circulated internally at Edison, we're
18 hoping to submit that to the Docket on Friday of this week.
19 They're hoping to send that out to us -- to ship that out at
20 the close of business on Thursday.

21 COMMISSIONER SHARPLESS: If my recollection serves
22 me that was to have been out on, was it May 15th?

23 MR. WELCH: That was what they had targeted for but
24 they didn't make that.

25 COMMISSIONER SHARPLESS: So now the draft will be

1 out, did you say this coming Friday?

2 MR. WELCH: This Friday, yes, so they're one week
3 late.

4 COMMISSIONER SHARPLESS: Okay. So we have had a
5 week slippage?

6 MR. WELCH: Yes.

7 COMMISSIONER SHARPLESS: And that means that the
8 ISO is going to have a week less or a week more depending on
9 how the process works.

10 MR. WELCH: Right. I don't know how it is going to
11 impact them. They are roughly familiar with the study that
12 has been done but they do not have it yet.

13 COMMISSIONER SHARPLESS: Okay. So you're saying
14 that the ISO has indicated that they need two weeks, okay.
15 So we'll keep that in mind as we talk about the schedule.
16 Staff, do you have any additional comments on the
17 transmission? I think your status report said that sometime
18 in the first part of June you anticipated, if they were on
19 schedule, to be holding a workshop on Transmission.

20 MR. BUELL: Yes. Staff had previously discussed
21 with the parties a possible date for a workshop of June 9th.
22 Based upon the delay in receiving the interconnect study we
23 have proposed delaying that another week. It would probably
24 be advisable to allow the ISO to complete their review. I
25 had received an e-mail yesterday from the ISO indicating that

1 they still need two weeks to renew the interconnect study so
2 that would mean their analysis would not be available until
3 around June 6th, I believe. So it would be reasonable to
4 delay that workshop to allow others to review what the ISO
5 has concluded and have a productive workshop.

6 COMMISSIONER SHARPLESS: Fine, thank you.

7 MR. BUELL: One last thing I would like to iterate
8 is that the applicant should serve the interconnect study on
9 all the parties.

10 MR. WELCH: That's what we plan to do.

11 MR. BUELL: Okay.

12 COMMISSIONER SHARPLESS: Okay, fine. Right, the
13 interconnect study that will be coming out on Friday. We can
14 assume that perhaps all parties will be receiving it on
15 Friday the 22nd?

16 MR. WELCH: Well, it will be mailed to all parties
17 on Friday the 22nd.

18 COMMISSIONER SHARPLESS: Okay, fine.

19 MR. WELCH: And served on the Docket Office on that
20 day.

21 COMMISSIONER SHARPLESS: Okay, great. And let's
22 see. We have Mr. Joseph.

23 MR. JOSEPH: I have nothing further to add. We'll
24 work with the staff to schedule a workshop one week after we
25 had previously anticipated.

1 COMMISSIONER SHARPLESS: Okay, fine. Well, we knew
2 that one would be rather quick. Moving right along we'll go
3 to Water. Mr. Wolfinger, would you like to cover the water
4 issue?

5 **WATER**

6 MR. WOLFINGER: I believe on the 15th -- And I tell
7 you, the unfortunate part is none of us here on this side
8 have got actually what we submitted to you on the 15th
9 because it came out of another office and we haven't got our
10 copies. But I do believe we answered, I believe it was the
11 five questions on the water; is that right? We did?

12 MR. BUELL: Yes.

13 MR. WOLFINGER: We're working from our draft.
14 Basically there was a technical memorandum showing some
15 sensitivities of water draw-down, that will be out by the
16 22nd. We approved that, and in fact it went out yesterday to
17 Diane Gilchrist who then serves it on the Commission.

18 The models for the well draw-down were already
19 submitted and that was a request that was requested. The
20 annual consumption for the simple cycle, there seems to be --
21 Although it's important it's a clarification. We don't use
22 that much water on simple cycle but we've given some
23 conflicting data and we'll have the correct data on the 22nd
24 on that. There was a question of the storage tank in the
25 draft water report. The consultant said we should have as a

1 surge a 1.4 million gallon surge tank. Our application that
2 we originally submitted had a 2.3 million gallon tank in
3 there and that 1.4 is included in that tank so we answered
4 that question.

5 We also answered the aspect of when the supply -- I
6 believe it was conditions for certification of -- Conditions
7 from the water supplier so that they could be included in the
8 certification. I have to say we're a little fuzzy on that
9 one and the reason for that was that we're still trying to
10 determine who actually is going to be the lead agency down
11 there. They haven't decided if it's going to be -- we're
12 going to get a group called the Victor Valley Economic
13 Development Authority, if they're going to be the lead agency
14 or if the Victor Valley Water District is going to be.

15 So we do agree that we do have to have the
16 conditions and some sort of a will-serve letter or some sort
17 of an obligation to supply water is going to be required
18 before we construct but at this point in time we're saying 90
19 days prior to the Energy Commission's scheduled certification
20 we'll have all the conditions at least lined up.

21 COMMISSIONER SHARPLESS: Can you go into a little
22 bit more detail about how they're going to resolve the lead
23 issue on water. Do you know anything more?

24 MR. WOLFINGER: Only in an anecdotal manner. We
25 were up with them yesterday and I think what it is is these

1 various agencies have got to get together amongst themselves
2 and decide. That's basically what is going to happen. We're
3 waiting for their direction to figure out -- And I think they
4 are still trying to determine which one of these agencies,
5 whether it's Mojave Water Agency, Victor Valley Economic
6 Development Authority or Victor Valley Water District, who
7 has got scopes of work and who should be doing what. I don't
8 think they have decided that amongst themselves yet.

9 COMMISSIONER SHARPLESS: Okay. I believe I read
10 somewhere, I don't know whether it was in your document or
11 perhaps staff's document, that Victor Valley Water District
12 was planning on holding or having a meeting on the water
13 issues.

14 MR. WOLFINGER: Yes.

15 COMMISSIONER SHARPLESS: Has that occurred?

16 MR. WOLFINGER: We are having -- Andy went up and
17 talked to them. Why don't we get Andy to -- He's been
18 dealing with it. Andy, why don't you come up and --

19 MR. WELCH: We appeared at their board meeting
20 about two weeks ago and they asked us if we could do a
21 further presentation in detail of the water plan. They have
22 got a consultant that is looking into -- to verify the
23 numbers that we had submitted as part of that water plan and
24 they just wanted the opportunity for the board to hear the
25 discussion of those.

1 MS. SHAPIRO: When is that?

2 MR. WELCH: That's Tuesday.

3 COMMISSIONER SHARPLESS: The fact that they are
4 having this meeting, is that any indication that they might
5 be the lead?

6 MR. WELCH: No. I think that what they are is that
7 they would be the ones that would be potentially impacted by
8 the plan, whether they become the lead agency to supply us
9 water or they supply it through someone else. They had the
10 concerns. They just need to verify that we won't impact
11 their plans.

12 COMMISSIONER SHARPLESS: I guess what I'm
13 struggling with is I don't understand why there is an issue
14 on who is going to be the lead.

15 MR. WOLFINGER: The Victor Valley Economic
16 Development Authority is the organization that controls the
17 airport area and the base area. They have the franchise to
18 serve water, they have the service of water. The Victor
19 Valley Water District will supply water. The intent, at
20 least at this time, is for the Victor Valley Water District
21 to supply groundwater when we need groundwater and that the
22 Mojave Water Agency will supply Victor Valley Economic
23 Development Authority with state water project water when
24 we're taking state water project water.

25 The question is, though, Victor Valley Economic

1 Development Authority is more of just an intermediary in
2 supplying of local transmission of water within this base and
3 they're trying to decide if it's better for us to negotiate
4 directly with the Victor Valley Water District to the
5 conditions of how we're going to pay for the groundwater and
6 simply work it directly with them or we go through Victor
7 Valley Water District who then goes -- Victor Valley Economic
8 Development Authority who then goes to the Victor Valley
9 Water District and negotiates.

10 So the question is, do they want us to go directly
11 to these end suppliers, Mojave Water Agency and Victor Valley
12 Water District and negotiate directly with them, or do they
13 want to take it. And they haven't decided politically what
14 they want to do.

15 COMMISSIONER SHARPLESS: Well, what is the
16 decision-making process and what do you think the timing is?
17 Do they have to do this in a board meeting? Are they in
18 charge? Do they have a time frame?

19 MR. WOLFINGER: We did not -- I have not determined
20 if they -- They are all discussing it but it's simply a
21 matter of discussing amongst the parties.

22 MR. WELCH: It is board decisions on the part of --

23 COMMISSIONER SHARPLESS: And they do understand the
24 difficulty that this puts you in, in terms of your schedule
25 here? In that as long as it takes them to sort through these

1 issues the longer your delay, the more difficult it makes it
2 for us to process this application. So I'm just wondering if
3 someone needs to know what the situation is to get moving on
4 this.

5 MR. WOLFINGER: The water plan that we have
6 submitted does detail where we're going to get the water, has
7 identified exactly where the water is coming from. It talks
8 about what the issues are. The question actually is where we
9 negotiate. It's much more in the neighborhood of financial,
10 what we're going to pay for it and how we're going to put it
11 in. From the standpoint of a CEQA process and that, I
12 believe we have submitted the information required to make a
13 decision. It's really now a matter of contractually how much
14 money we're going to pay for this or that. But I think the
15 water plan in order to come to a decision has been well
16 established by the applicant.

17 COMMISSIONER SHARPLESS: Well, I'm not sure that
18 that's going to be adequate, you know.

19 MR. WOLFINGER: Well, it may not be but --

20 COMMISSIONER SHARPLESS: They're going to negotiate
21 what they are going to allow you to have. You have submitted
22 your proposal, right? What is the negotiation about, the
23 price of the water or what you're going to have? How much of
24 what you're going to have --

25 MR. WOLFINGER: It's more -- Probably it's like --

1 COMMISSIONER SHARPLESS: -- and what mitigation
2 measures.

3 MR. WOLFINGER: It's things like who is going to be
4 the lead agency that I talk to, actually, and then do I pay
5 for the infrastructure up front and then maybe an O and M
6 charge for them to pump water and move it or do they charge
7 me an annual fee of capacity? Do I pay as I use the water?
8 It's things like that that they haven't decided, you know.
9 Is Victor Valley Water District going to be a wholesaler to
10 VVEDA and I do this through VVEDA? Those are the questions.
11 The fact that the pipe is in the ground and the wells are
12 going to be where they are, that's established.

13 COMMISSIONER SHARPLESS: This is the way I see the
14 problem.

15 MR. WOLFINGER: Okay.

16 COMMISSIONER SHARPLESS: The problem is that in
17 order for us to issue a certification you have to meet all
18 the laws, orders, ordinances, rules, regulations of all
19 pertinent agencies. Water is a big issue in this area. The
20 negotiations will help determine how those rules, laws, et
21 cetera are going to be met. We know what your proposal is.
22 We know what you would like. But we don't know where the
23 negotiations are going to take you. That leaves a detail
24 that is important for us to have I think at the Final Staff
25 Assessment level, not later.

1 But I haven't heard from staff. I'm speaking as
2 one Commissioner who has been trying to stay on top of this
3 project who knows that she has to do an adjudicatory hearing,
4 who knows that she has to make her decisions based on a
5 record and I want the strongest record possible. Perhaps we
6 can go to staff on the water issues. Would you like to speak
7 on the water issues?

8 MR. BUELL: Yes. A couple of things. The first
9 one is that regarding -- There seems to be a miscommunication
10 with regard to what staff is requesting regarding the spread
11 sheet, a copy of a spread sheet that was number two listed in
12 our May 8th letter, on page six under Water Resources as a
13 data requirement. At the workshop, I believe it was on April
14 30th, we had talked about the applicant providing a copy of,
15 an electronic copy of the spread sheet that was actually used
16 to do the modeling. We were looking for that to be provided
17 in response to number two. Although the details of the
18 modeling were presented in the March 15th not all the
19 details, and specifically the fiscal --

20 MR. WOLFINGER: That was the Excel sheet that
21 you're looking for?

22 MR. BUELL: Yes.

23 MR. WOLFINGER: Okay.

24 MR. WELCH: You did not receive a disk with that
25 data request filing?

1 MR. BUELL: I have not seen it yet.

2 MR. WOLFINGER: Not with the data --

3 MR. WELCH: Back in March you didn't?

4 MR. BUELL: Not that I --

5 MR. WELCH: I believe we submitted a disk with
6 that, at least we intended to.

7 MR. BUELL: We will check Dockets but I do not
8 recall seeing that.

9 MR. WOLFINGER: We think that the spread sheets
10 came with it.

11 MR. BUELL: Dockets a few times has not told me
12 about things that have come in so there is a possibility they
13 received it and I was unaware that we had received it.

14 COMMISSIONER SHARPLESS: Okay, so the only problem
15 is we have got to track down what happened to the stuff that
16 was sent.

17 MR. WELCH: Right.

18 COMMISSIONER SHARPLESS: Right.

19 MR. WOLFINGER: Let me know and we'll submit
20 another copy of the Excel disk.

21 MR. BUELL: Certainly.

22 MR. WOLFINGER: A copy of the disk then.

23 MR. WELCH: The reason that we didn't submit it
24 again is because we wanted to make clear that everything in
25 the March 15th submittal was consistent with the work that

1 was done for the water plan.

2 MR. BUELL: Okay, very good, we'll check on that.

3 The last item -- Actually, the last item that had to be
4 identified is number five on staff's list regarding Water
5 Resources. We had identified that the applicant should
6 provide will-serve letters that contain the conditions which
7 the various water agencies would place upon serving water for
8 the project. And we said that that should be provided prior
9 to certification and that we also said it would be ideally
10 provided prior to issuing the Final Staff Assessment.

11 In retrospect I think staff used the wrong word
12 when we said *ideally*. I think we concurred with Jan
13 Sharpless, Commissioner Jan Sharpless' characterization of
14 needing that prior to the FSA. That it is mandatory that we
15 have that information so that we can include in our FSA those
16 conditions that the agencies may want to place upon serving
17 water for this project and additionally to have a complete
18 understanding of the environmental impacts that would be laid
19 out in our Final Staff Assessment. So with that correction
20 we have no other comments on water.

21 COMMISSIONER LAURIE: Commissioner Sharpless, a
22 question on one point.

23 COMMISSIONER SHARPLESS: Yes, Commissioner Laurie.
24 I got it right.

25 COMMISSIONER LAURIE: On that, question, Mr. Buell.

1 Will-serves may in fact contain conditions to service; is
2 that right?

3 MR. BUELL: That is my understanding, yes.

4 COMMISSIONER LAURIE: And is it also your
5 understanding that those conditions may by themselves have an
6 environmental impact which must be analyzed?

7 MR. BUELL: Certain aspects, certain things that
8 those districts may require, yes, may result in environmental
9 consequences.

10 COMMISSIONER LAURIE: So is it staff's position
11 that CEQA mandates that the conditions in a will-serve be
12 analyzed as part of your CEQA analysis?

13 MR. BUELL: Yes.

14 COMMISSIONER LAURIE: If the applicant disagrees
15 with that I'd be interested in knowing that, thank you.

16 MR. WOLFINGER: We do.

17 COMMISSIONER LAURIE: You do?

18 MR. WOLFINGER: Disagree.

19 COMMISSIONER LAURIE: I would be most interested in
20 examining the issue. I think it's an important point. If it
21 is of -- If the timing is of concern to you I'd certainly be
22 most interested in the rationale behind your position.

23 MR. WOLFINGER: You want to talk about that now?

24 COMMISSIONER SHARPLESS: Yes, of course.

25 MR. WOLFINGER: Okay, okay. Our point is a will-

1 serve letter usually has an --

2 COMMISSIONER LAURIE: I'm sorry, I did not intend
3 to take up the Committee's time at this point, unless you
4 wanted to, Commissioner Sharpless. I just wanted to make it
5 clear that it is clearly a legal issue and I wanted to make
6 sure all parties had an opportunity to submit at some point
7 argument. If you wanted to listen to it today I would be
8 more than happy to listen to it but I certainly don't need to
9 take the Committee's time today.

10 COMMISSIONER SHARPLESS: I'm going to let it stand
11 with the applicant. If the applicant feels that it can make
12 its argument today, please do so.

13 MR. WOLFINGER: Well, we made an argument basically
14 in the response and that is that will-serve letters sometimes
15 have very significant--in order to actually have them signed
16 and documented--very significant financial obligations. And
17 prior to our getting a certification deciding to go ahead we
18 think it is an undue burden on the project to actually have a
19 signed will-serve letter to incur those kind of obligation.

20 Because there is an obligation on the part of the
21 agency also to supply in a certain period of time and they
22 often will ask for money to be posted ahead of time, bonds,
23 things like this. And to the extent -- And I mention it in
24 the letter. To the extent that we are into significant, non-
25 cancelable obligations we think it's a burden on the project.

1 To the extent that we can enter into agreements or other
2 types of things that don't have predetermined obligations
3 prior to us receiving a certification from the State here to
4 build a plant and to go on ahead then I don't have as big a
5 problem with it. But that was my concern.

6 COMMISSIONER LAURIE: Well, I --

7 COMMISSIONER SHARPLESS: Go ahead.

8 COMMISSIONER LAURIE: I'm sorry.

9 COMMISSIONER SHARPLESS: No, go ahead, Commissioner
10 Laurie.

11 COMMISSIONER LAURIE: Every will-serve letter that
12 I have ever seen, a thousand of them, basically say, we, the
13 below-signed district hereby indicate to you that we are
14 going to serve you water under these conditions, or, we will
15 assure the delivery of water under these conditions. Those
16 conditions may have an environmental impact attached to it,
17 which in my understanding needs to be analyzed as part of our
18 CEQA analysis. I'm not satisfied that a will-serve is a
19 legally binding document that binds you to do anything other
20 than informing you of the terms and conditions under which
21 you will receive a water supply. So if my understanding is
22 different than yours I'd be interested in knowing about it.

23 MR. WOLFINGER: Well, under your definition I don't
24 have a problem. Victor Valley Water District, when we talked
25 to them a year and a half ago--and I have to say the

1 management has changed in that period of time--was very
2 insistent that a will-serve letter was a legal obligation and
3 they required a lot of things of us. And that's what makes
4 me skittish in this environment. That I'm concerned that the
5 definition of a will-serve letter is going to require me to
6 get into an obligatory contract. And that's why I couched
7 my -- I don't -- Your kind of a will-serve letter -- But to
8 the extent that I have significant, non-cancelable
9 obligations the will-serve letters are really directed by the
10 water districts, not by --

11 COMMISSIONER LAURIE: I understand.

12 MR. WOLFINGER: So I'm concerned about definition
13 in this.

14 COMMISSIONER LAURIE: What is staff's definition of
15 a will-serve?

16 MS. HOUGH: I think that we are focusing on perhaps
17 the wrong thing, which is the title of what the letter is.
18 What we need to is what conditions, under what conditions is
19 this project going to get water. If the district can tell us
20 that without a will-serve letter that's fine, if they can't
21 tell us that unless they have got a will-serve letter then
22 that is what we're going to need. But we need to be able to
23 look at the conditions that will apply to this project
24 receiving water and then analyze those and make sure that our
25 FSA analysis is consistent with those.

1 COMMISSIONER LAURIE: All right.

2 MR. WOLFINGER: I don't have a problem with that.

3 COMMISSIONER SHARPLESS: Good. It would probably
4 be well if at some point when the staff -- I know the staff
5 has some workshops set up. If you could pursue this issue to
6 find out precisely what kind of document we can get that has
7 the conditions in that. And if it is something other than a
8 will-serve letter that I think will serve the purposes. We
9 understand about the financial obligation. Commissioner
10 Laurie has a great deal of experience in permits and siting
11 in a county that has very difficult water problems so I yield
12 to his expertise in this area.

13 COMMISSIONER LAURIE: That experience comes despite
14 my extremely young age.

15 COMMISSIONER SHARPLESS: That too. Wrong place,
16 wrong time for Commissioner Laurie. Okay, Mr. Jacobs.

17 MR. JOSEPH: Thank you, Commissioner.

18 COMMISSIONER SHARPLESS: Mr. Joseph, sorry. Why
19 break my record today of screwing up everybody's name.

20 MR. JOSEPH: Our position on this is fairly similar
21 to the staff's position. I think we start out with the
22 proposition that there still is no firm water supply for this
23 project. Mr. Wolfinger said that, you know, the fact that
24 there will be wells and pipes on the ground is established.
25 Well, that is not established. Victor Valley Water District

1 is the one that can establish that, whether that will or will
2 not happen, and that hasn't happened yet.

3 Commissioner Laurie, as you pointed out, if they do
4 succeed in obtaining a secure supply of water, a firm supply
5 of water, there could well be environmental and socioeconomic
6 impacts with that, which the Commission has to analyze. The
7 Commission can't analyze the impacts of obtaining the water
8 supply and possible mitigation measures other than what the
9 water district suggests. The Commission may well decide that
10 there is going to be a significant impact due to the large
11 amount of use of fresh water in the desert and decide that
12 you need to look at mitigation measures such as dry cooling.
13 You need that information and the staff needs that
14 information to be able to do their assessment of impacts and
15 potential mitigation measures.

16 I think there is now general agreement that all of
17 the information and the security and the firmness of that
18 water supply is something I think we all agree on has to be
19 part of the analysis. But I think it's clear that whether or
20 not the letter is called a will-serve letter there has to be
21 a commitment for a firm water supply or you don't have a
22 solid record to proceed on. If that is widespread agreement
23 then I think we have an issue resolved in concept.

24 COMMISSIONER SHARPLESS: Thank you, okay. We're
25 not doing too badly today here, we're speeding right through.

1 HEARING OFFICER VALKOSKY: I just have two
2 questions.

3 COMMISSIONER SHARPLESS: Yes, I'm sorry. Stan.

4 HEARING OFFICER VALKOSKY: Mr. Buell, just to
5 clarify for my understanding. Aside from a missing disk do
6 you agree that applicant has submitted the information that
7 you requested concerning water?

8 MR. BUELL: There's the one item that will be filed
9 on Friday.

10 HEARING OFFICER VALKOSKY: Right, there are two
11 items that I believe are coming in on the 22nd.

12 MR. BUELL: Two items.

13 HEARING OFFICER VALKOSKY: But aside from those and
14 aside from the missing disk have they satisfied your
15 information requests?

16 MR. BUELL: I guess Caryn wants me to echo the need
17 for the will-serve letters or something that is functionally
18 equivalent to that as being one outstanding item --

19 HEARING OFFICER VALKOSKY: Right. I believe the
20 understanding the Committee is proceeding on is that the
21 conditional parts of the will-serve letter are something that
22 have to be available for inclusion into the Final Staff
23 Assessment.

24 MR. BUELL: Right.

25 HEARING OFFICER VALKOSKY: At least that is my

1 understanding of it.

2 MR. BUELL: As has been tradition, staff would
3 prefer having that information submitted at least 45 days
4 prior to issuing the FSA.

5 COMMISSIONER SHARPLESS: Which information is 45
6 days before the FSA?

7 MR. BUELL: The will-serve letters or the --

8 COMMISSIONER SHARPLESS: The equivalent.

9 MR. BUELL: The equivalent thereof, yes.

10 MS. HOUGH: The conditions.

11 HEARING OFFICER VALKOSKY: The conditions, yes.

12 COMMISSIONER SHARPLESS: Okay.

13 HEARING OFFICER VALKOSKY: I have one final
14 question. Mr. Wolfinger or Mr. Welch, in your submittal you
15 have got a sentence that I would really like explained to me.
16 I'll quote the sentence, it is on page three. And the
17 sentence reads:

18 "The project does not plan to enter into
19 a binding agreement prior to certification if
20 significant non-cancelable obligations are
21 incurred by the project."

22 Could you explain to me what that means.

23 MR. WOLFINGER: That was basically the conversation
24 I had with Commissioner Laurie here and that is, is that in a
25 previous conversation with the Victor Valley Water District

1 in order for us to sign -- before them being willing to sign
2 a will-serve letter which they felt was a binding, a legally
3 binding obligation to them, they require a potentially
4 posting of bonds or posting of money and doing things like
5 that. There was a financial obligation.

6 And they explained to me that that's what they
7 require, for example, of developers who were putting in a 60
8 home development and they got a will-serve letter. That
9 builder before he got a will-serve letter had to post the
10 money ahead of time, had to put the money into the account of
11 the Victor Valley Water District before they would provide
12 the will-serve letter. So that was my concern, is that at
13 that point in time they were espousing that same thing.
14 Before they supplied a will-serve letter they wanted to see,
15 you know, \$5 million or whatever the case may be. And that
16 was -- That was the issue.

17 COMMISSIONER LAURIE: Did they explain the
18 reasoning for that? Is it that in order to provide the will-
19 serve they want to specifically dedicate a specified amount
20 of water supply? And that having been paid for -- That
21 amount is not yours if not paid for and then they have a
22 number of will-serves out there without a specific amount set
23 aside. Was that their rationale?

24 MR. WOLFINGER: This conversation occurred about a
25 year ago and to tell you truth I don't remember. I remember

1 we discussed some of those issues and they gave their
2 explanations but I don't remember the specifics. I do
3 remember that they were asking for some pretty significant
4 binding obligations and that's what I'm, you know, I'm
5 concerned about.

6 COMMISSIONER LAURIE: Basically you're telling us
7 that the district is telling you you're not going to get a
8 will-serve unless you put your money up.

9 MR. WOLFINGER: Well --

10 COMMISSIONER LAURIE: Because only that way they
11 know you're serious.

12 MR. WOLFINGER: There was--and I say was because it
13 doesn't exist now--a group that ran that organization that
14 have since -- There's been a reelection, the general manager
15 is gone. I do not know and I have not -- Because this is
16 happening I don't know what the present feeling is of both
17 the management of the Victor Valley Water District and the
18 Board as to whether they would enter into will-serve letters
19 with or without this at this point in time. That's simply
20 the way I answered this question the best I could.

21 COMMISSIONER LAURIE: I'm just concerned about
22 time, Commissioner Sharpless, water is a critical issue.
23 It's clearly required for our CEQA analysis. I'm not willing
24 to go as far as Mr. Joseph states at this point, that CEQA
25 requires a firm commitment of total and complete water

1 supply. I am not satisfied today that that's the rule, I
2 know the issue has been raised in other instances. But
3 that's just something that we need.

4 MR. WOLFINGER: Commissioner Laurie, we did supply
5 a water supply plan that showed where the wells are going to
6 be, what the draw-down is, the ability of the aquifer to
7 support the pumping requirements, the corridors where the
8 pipelines go, paleontology, cultural, botany, biology. So
9 the physical aspects of how the water is gotten, those have
10 been established; what hasn't been established is, in fact,
11 who is going to do it, who is going to pay for it.

12 COMMISSIONER LAURIE: Pipes are pipes and water is
13 water.

14 MR. WOLFINGER: And so I think that the physical
15 aspects of the process we have established. What we haven't
16 established is, will Victor Valley Water District own those,
17 will VVEDA own them, will the project own them. Those are
18 some issues --

19 COMMISSIONER SHARPLESS: And I think the water
20 districts have to agree with your proposal.

21 MR. WOLFINGER: Absolutely, and that's the answer.

22 COMMISSIONER SHARPLESS: They know that you are not
23 the only user in town. If they are looking at economic
24 development they are looking at what uses, other uses might
25 come in. I think this power plant is going to be very

1 important to the community but so are -- so are businesses
2 that create jobs.

3 MR. WOLFINGER: Recognize that the adjudication --

4 COMMISSIONER SHARPLESS: They need water.

5 MR. WOLFINGER: Yes. Recognize the adjudication
6 there, that every gallon of water that is used in that
7 valley, and has been for the last five years and will
8 continue, will be imported water. That in fact, as long as
9 there is imported water development will go on. Whether it
10 is used in a power plant, for a house, for a McDonald's or
11 whatever it is the aquifers, the underlying aquifers are
12 really just storage areas for water and they go up and down
13 with percolation ponds. That in fact, an industrial project
14 coming in, an expansion of the airport or whatever, it is all
15 predicated on imported water. That's how that entire process
16 up there works. It's not a matter of delaying one over the
17 other or saying, you can't build houses because you have a
18 power plant, it is all 100 percent imported water for
19 incremental usage.

20 COMMISSIONER SHARPLESS: Yes, but everybody has got
21 a straw in that pond and you are just one of many straws.

22 MR. WOLFINGER: And that's the critical issue and
23 that is, you know, one of the things that, you know, the
24 imported water.

25 COMMISSIONER SHARPLESS: That's what I'm saying.

1 I'm saying that I think the water agencies are going to have
2 to look at imported water as well as their own water table
3 and decide what is going to be best for their area. So, you
4 know, it is just not a case of what is in your proposal, it
5 is a case of where those water districts see their future in
6 water.

7 MR. WOLFINGER: Right. And the water master is the
8 Mojave Water Agency. We had considerable conversations with
9 Mr. Rowe and they are in agreement that this is the proper
10 type of water plan to do. So, I mean, it is not as if this
11 is, you know, that this hasn't all been discussed and talked
12 about down there. The idea of who takes the lead and does
13 what is still up in the air financially, who owns the pipes
14 and the wells. But where the water is coming from, is there
15 sufficient water, does the Mojave Water Agency who is the
16 water master up there, do they have the water, it's there,
17 they believe it's -- And that's the case.

18 COMMISSIONER SHARPLESS: Well, we've all had to
19 deal with water issues, were it so easy.

20 MR. JOSEPH: I would just point out two things:
21 One, the water district might say, no, it is not a given yet.
22 They might say, no. They might say, we would prefer 4,000
23 acre/feet a year or more than 25 percent increase in our
24 obligations to go someplace else that is better economically
25 for this area. So I just have to take issue with the

1 statements that, you know, all the pipes and wells are all
2 established, all the physical things are all established,
3 we're just talking about money. They're not just talking
4 about money, they might say, no.

5 Second, Mr. Valkosky, you asked about information
6 requirements. I would just note that we served a set of data
7 requests on May 8th; a substantial portion of those deal with
8 water issues.

9 HEARING OFFICER VALKOSKY: And has there been any
10 objection to those data requests?

11 MR. THOMPSON: The data requests while styled 139
12 to 151 were actually some seventy-plus separate questions and
13 we are evaluating those now and will be -- I think we have
14 until Tuesday because the 15 day time limit from when we
15 received the data requests runs somewhere over this three day
16 weekend, I think it's Saturday or Sunday. So we will be
17 responding on Tuesday, but there's a lot of requests there.

18 COMMISSIONER LAURIE: Just as long as I understand
19 the rules. Is there a procedure available to object to
20 requests and what is that time period?

21 MS. HOUGH: Fifteen days.

22 COMMISSIONER LAURIE: Okay. Is that the 15 days
23 you were referring to?

24 MR. THOMPSON: It is.

25 MS. HOUGH: And then the party that asks the data

1 requests can either come to the Committee for a Motion to
2 Compel or drop the issue.

3 COMMISSIONER SHARPLESS: Okay, fine. Anything more
4 on Water by the parties? Anybody in the audience?

5 Okay, let's then move to topics that deal with the
6 FAA Visual, the Department of Toxic Substance Control Permit,
7 that grouping.

8 MR. WOLFINGER: I'm sorry, I'm sorry, I was
9 conferring with my --

10 COMMISSIONER SHARPLESS: The grouping in your
11 letter that deals with the FAA issues, the visual issue, the
12 Department of Toxic Substance Control permit. Sort of
13 everything that we have got left on the table except for the
14 Pipeline and Air Quality and Scheduling. We'll just cover
15 everything else.

16 MR. WOLFINGER: Which one do you want to start
17 first with, Waste Treatment?

18 COMMISSIONER SHARPLESS: If you would like, that
19 would be a good one.

20 **WASTE TREATMENT**

21 MR. WOLFINGER: We submitted a document. We don't
22 believe that we are required to supply a -- it will be
23 classified as a hazardous waste. I have to read my notes
24 here, I'm sorry, here. Let me just -- That we are recycling
25 and that we have stated that we believe that there is no

1 hazardous waste permit required for our proposed recycling
2 operations, which is what we are. Because basically what
3 this does is it takes the water out of there. We recycle the
4 water and we come up with a solid waste. So it's not as if
5 we're recycling --

6 COMMISSIONER SHARPLESS: I understand, I have read
7 your paper. I understand that you have had meetings with the
8 Department of Toxic Substance Control.

9 MR. WOLFINGER: I think we've met -- We've talked
10 to them, we haven't met with them.

11 COMMISSIONER SHARPLESS: Okay, you have talked to
12 them. And I believe that in order to resolve this issue what
13 you need to do is apply for the exemption; is that not right?
14 That is my understanding of how we resolve this issue. Do
15 you have a different understanding?

16 MR. WOLFINGER: Just leave me a minute, let me read
17 what I brought along.

18 COMMISSIONER SHARPLESS: Sure.

19 MR. WOLFINGER: I am not sure. Do you know, Mike?
20 Step in here, don't be bashful.

21 MR. CARROLL: Let me try to answer the question.
22 It is a little outside of my area of expertise but another
23 lawyer in our office did step in and I was participating in
24 the calls. I am not sure that that is the case. And let me
25 back up, there is -- In addition to the recycling exemptions,

1 if you read through the analysis, there is some question
2 about whether or not this, what we're talking about here
3 would be a waste in the first place. And our response to the
4 issue is sort of a tiered response.

5 The first question is, first of all, we don't think
6 this is a waste and therefore we don't think it's regulated.
7 Even it was a waste we have some question about whether or
8 not it would be hazardous waste. Some of the analysis that
9 was submitted by CURE, I believe, indicated that it could
10 exceed the toxicity limits, other analysis that we have seen
11 indicates that it doesn't exceed the toxicity limits. But
12 even if you assume it is a waste and it is a hazardous waste
13 then the recycling exemptions, and there are two of them that
14 could possibly apply, would kick in. So it's sort of a, we
15 don't think it's this but if it is we don't think it's this,
16 but if it is then ultimately the recycling exemptions --

17 COMMISSIONER SHARPLESS: Well, in order for us to
18 resolve what the legalities are would it not be best to
19 submit that issue to the appropriate agency and have a
20 response on the record rather than, we don't think?

21 MR. CARROLL: I don't believe that if an exemption
22 applies you are required to apply for an exemption. I think
23 perhaps if you determine based on your analysis that you
24 qualify for the exemption, that's it, you don't need to go to
25 the agency and say, we believe we qualify for this exemption

1 so we're applying for it.

2 COMMISSIONER SHARPLESS: I think the only way you
3 can get an exemption is to go through the process and
4 actually get an exemption. Otherwise you're saying, our
5 project does not apply, period.

6 And I'm not saying that reading either what I got
7 from the applicant and what I got from staff has led me to
8 the conclusion that that issue has been resolved in a final
9 way. I think we're still unresolved on that issue. Perhaps
10 what I ought to do is move to staff and to the intervenor and
11 let them set their positions on the table.

12 MR. BUELL: Staff has been in contact with the
13 Department of Toxic Substance Control and we have received
14 similar information that I think the applicant has received,
15 that the project is likely to qualify for an exemption. We
16 specifically asked the Department to provide us a letter to
17 that effect and the Department was reluctant to do that to a
18 third party, to respond to a third party's request. They
19 have indicated that they would require a letter or a request
20 from the Applicant in order to respond to whether or not the
21 project actually qualifies for an exemption.

22 And I believe that that would be the most
23 expeditious way to proceed in this case, is for the applicant
24 to submit the information. Which I believe the Department
25 already has a copy of the AFC and has CURE's letter so they

1 have the information, it's simply a request for them to in
2 writing identify that the project qualifies for the
3 exemption.

4 COMMISSIONER SHARPLESS: And what about USEPA?

5 MR. CARROLL: I believe the answer to that is that
6 the state has delegation from USEPA to administer the
7 hazardous waste program.

8 MS. HOUGH: That's correct.

9 MR. BUELL: That's correct. I wanted to confirm
10 that with my staffers and apparently --

11 COMMISSIONER SHARPLESS: Is that true? Because
12 your status report leaves the issue still open.

13 MR. TOOKER: My name is Chris Tooker, I'm the
14 supervisor of the staff person addressing this issue. Based
15 on discussions with her and her consultation with the USEPA
16 there is a possibility that there could be a question of
17 defining the status of the waste under USEPA. I believe that
18 there needs to be some consultation there as well between the
19 applicant and USEPA to confirm that in fact it is not a RCRA
20 waste and therefore wouldn't require some special treatment
21 or classification as I think asserted by CURE at this point.

22 MR. BUELL: I would also add that most recently I
23 have heard, as the applicant has indicated, that EPA has
24 deferred to the Department of Toxic Substance Control so
25 their determination may be all that is needed in this case.

1 But certainly it wouldn't hurt to touch bases with EPA. We
2 have been unable to contact them directly, as our memorandum
3 had indicated, prior to issuing our last status report.

4 MR. CARROLL: Well, I guess I would object to
5 having to touch bases with EPA given that they don't have any
6 jurisdiction over it. I mean, the State of California has
7 delegation to administer the hazardous waste program in the
8 state of California and we're perfectly happy to go back to
9 them and -- But I have problems going to the EPA since they
10 don't really have any authority over the program. It just
11 doesn't seem necessary and it is an extra step for us.

12 MR. BUELL: Staff volunteers to make that contact.

13 COMMISSIONER LAURIE: I'm sorry?

14 MR. BUELL: The staff will make that contact with
15 USEPA and make sure.

16 COMMISSIONER LAURIE: Okay, now explain to me why.
17 Do you believe the EPA has jurisdiction?

18 MR. BUELL: To clarify whether or not they have
19 jurisdiction, which it is my understanding at this point in
20 time that they delegated that to the state, to identify
21 whether or not they have any concerns regarding this matter.

22 COMMISSIONER SHARPLESS: But isn't that delegation
23 specified somewhere? Is it specified? Can you give us a
24 citation right now of where that delegation is specified?

25 MR. CARROLL: Not right now.

1 COMMISSIONER SHARPLESS: Or if you can't right now
2 could you provide it to us?

3 MR. CARROLL: Yes.

4 COMMISSIONER SHARPLESS: So we can just clear the
5 matter up.

6 MR. CARROLL: The other point that I wanted to make
7 in terms of getting some written verification from the agency
8 that the exemption applies. It is my belief that you do not
9 need to apply for the exemption. The way the hazardous waste
10 regulations work is if you determine based on your analysis,
11 and of course you're operating under your own risk, if you
12 make a mistake you're exposed. But if you determine under
13 your own analysis that you qualify for one of the exemptions
14 you are free to proceed.

15 I think that what DTSC is saying is that if we ask
16 them to analyze and verify our own analysis they would write
17 us a letter saying, yes, we concur with your analysis. But I
18 think that's different from some sort of a formal application
19 process for the exemption and I don't think that that latter
20 process is required or necessary. Now we are happy to go and
21 try to get the letter from them basically saying, we have
22 looked at your analysis and yes, we concur, but I just want
23 to make it clear that I don't think that that's required
24 under the regulations and it is more of an informal
25 concurrence than it is a formal application process.

1 COMMISSIONER SHARPLESS: Well, you may be well
2 right, I am just going on what I saw in the staff's write-up,
3 which explained the process, the three-tier process. It
4 indicated that the certified/unified program agency is the
5 Victorville Fire Department and that somehow you would need
6 to get an exemption from them. So I have on the one hand you
7 saying that you proceed at your own risk and on the other
8 hand I have staff's status report that says there is a three-
9 tier process and that you must apply for an exemption. I am
10 just trying to find the resolution in this issue.

11 Staff, would you like to present your position on
12 that issue?

13 MR. TOOKER: With respect to the three tiers: I
14 reviewed this issue also with technical staff and it appears
15 that there might be, that there is language in their rules or
16 in their regulations which talks about a --

17 COMMISSIONER SHARPLESS: Who is *their*, *their*
18 *regulations*?

19 MR. TOOKER: DTSC's.

20 COMMISSIONER SHARPLESS: Okay.

21 MR. TOOKER: Which talks about a conditional
22 exemption and another exemption which is kind of
23 unconditional. But it doesn't talk about an exemption,
24 period, and it may be that the exemption --

25 COMMISSIONER SHARPLESS: It doesn't say anything

1 about an applicant can do their individual analysis and make
2 this determination on their own at their own risk and satisfy
3 all laws and ordinances that pertain to this project?

4 MR. TOOKER: No, it doesn't. What it implies is
5 that they have two, two conditional exemptions that they can
6 issue. But the overall, you know, exemption from the program
7 may be outside of that process and may be the result of an
8 applicant inquiring as to whether their conclusion is
9 consistent with the agency's. Which seems to be what the
10 applicant is suggesting that they would do, to write a letter
11 and ask them to confirm and agree with their conclusion that
12 in fact an exemption, that they are exempt from the process.

13 COMMISSIONER LAURIE: Are we talking about 939? Is
14 that what we're talking about?

15 MR. TOOKER: I'm sorry, I don't know the number.

16 COMMISSIONER SHARPLESS: Is that a Section, a Code?

17 COMMISSIONER LAURIE: Yes.

18 COMMISSIONER SHARPLESS: A Code reference?

19 COMMISSIONER LAURIE: That's the recycling section.
20 When we're talking about an exemption, exemption from what?

21 MR. CARROLL: From the requirement to obtain a
22 permit for the treatment of hazardous waste.

23 COMMISSIONER LAURIE: Okay.

24 COMMISSIONER SHARPLESS: Because your contention is
25 that the crystallizer is really a recycling process which

1 precludes that from being a waste in the first place. Is
2 that your contention?

3 MR. CARROLL: Well, that's one of our contentions.
4 But remember, our other contentions are: first of all, it is
5 not a waste; and second of all, even if it is a waste it is
6 not hazardous. So assuming for the moment, and we are not
7 conceding on these points, but assuming that those two points
8 are true then yes, we are saying we would qualify for one of
9 the recycling exemptions, one or both of the recycling
10 exemptions.

11 COMMISSIONER SHARPLESS: Maybe you can clarify for
12 me. Mr. Buell just said, or Mr. Tooker, I can't remember
13 which, that he had understood that you said you would be
14 going to the Department and asking in writing whether or not
15 you would be --

16 MR. CARROLL: Well, I think we are willing.

17 COMMISSIONER SHARPLESS: -- covered or not.

18 MR. CARROLL: I think we are willing to do that, in
19 fact, we already did that verbally. And I believe, at least
20 the draft that I'm looking at has a footnote to that effect,
21 that Norman Riley of DTSC confirmed verbally over the
22 telephone our analysis. We are willing to try to get that
23 confirmation in writing as well. The only caveat that I
24 would point out is that until the system is up and running it
25 is impossible to answer the first two or at least it's

1 impossible to answer the second question, which is, whether
2 it is a hazardous waste.

3 COMMISSIONER SHARPLESS: How can you claim that it
4 is and then say you have to wait until it runs to determine
5 it?

6 MR. CARROLL: We don't believe that is a hazardous
7 waste at this point.

8 COMMISSIONER SHARPLESS: But you won't know unless
9 you have it in operation?

10 MR. CARROLL: Once it is in operation then we'll do
11 testing to confirm that. If it turned out that it was
12 hazardous waste then we would qualify for one of the
13 recycling exemptions. But we won't know, we won't be able to
14 answer the first -- the first and the second questions about,
15 is this a waste or is it a hazardous waste until it is up and
16 running. But I think that what we can say to the Department
17 is we would like confirmation that assuming once the system
18 is up and running it turns out to be a hazardous waste, would
19 we qualify for the recycling exemptions?

20 COMMISSIONER SHARPLESS: Doesn't that kind of
21 weaken your case? If I were DTSC I would have a level of
22 discomfort on writing you a letter and saying you were, you
23 know, your process was not a hazardous waste given that you
24 are not really going to really know that until you have
25 tested it in operation.

1 MR. CARROLL: I don't think they will write us a
2 letter saying it is not a hazardous waste. I think they
3 would be willing -- I mean, I don't know what they will be
4 willing to do. We will ask them to write us a letter saying,
5 look, we don't think this is hazardous but we would like you
6 to confirm for us that if it turned out to be hazardous waste
7 that we would qualify for the recycling exemption.

8 HEARING OFFICER VALKOSKY: And your letter will
9 address one of the basic concerns, i.e., do you need a permit
10 from DTSC.

11 MR. CARROLL: Yes, assuming we qualified for the
12 recycling exemption.

13 HEARING OFFICER VALKOSKY: Right.

14 MR. CARROLL: We would not --

15 HEARING OFFICER VALKOSKY: Because that is the
16 fundamental question, I think, that has to be answered.

17 MR. CARROLL: Right.

18 MR. JOSEPH: Perhaps I can join this discussion. I
19 feel sort of like the person at the party that everybody is
20 talking about and they don't know the person is there.

21 COMMISSIONER SHARPLESS: I'm sorry, we know you're
22 here, I guess we just assumed we know how you feel. But go
23 ahead, state it.

24 MR. JOSEPH: Perhaps you do. First, I wanted to
25 start with the last page of the applicant's May 15th status

1 report which says, and this is an important admission. It
2 says:

3 "It is possible that concentrations in
4 the brine stream heading into the crystallizer
5 would exceed the applicable hazardous waste
6 criteria."

7 First of all, as a procedural matter, this document was filed
8 in the Docket Office, it was served on the parties. Then a
9 day or two later we get a letter saying, we're withdrawing
10 that, and it's that paragraph which is deleted from the
11 document. We don't accept the notion that one can make an
12 admission on the record and say, oops, I wish I hadn't said
13 that, I'll take it back. We intend to rely on that admission
14 if necessary.

15 COMMISSIONER SHARPLESS: Are you referring to the
16 May 15th letter?

17 MR. JOSEPH: Yes, the very last page.

18 COMMISSIONER SHARPLESS: On the attachment.

19 MR. JOSEPH: Right.

20 COMMISSIONER SHARPLESS: Okay, I've got it.

21 MR. JOSEPH: The top paragraph in there has that
22 statement that I just read.

23 COMMISSIONER SHARPLESS: Okay.

24 MR. JOSEPH: Second, with respect to the process.
25 It is true that DTSC does have delegated authority over this.

1 But as with other delegated authority, EPA maintains a
2 continual oversight to be sure that their delegation is being
3 properly exercised. Commissioner Sharpless, I'm sure you're
4 familiar with this in the air quality area.

5 As a result, EPA and DTSC are consulting and will
6 make a determination as to whether or not the brine which
7 goes into the crystallizer and the crystallizer itself then
8 qualifies for the recycling exemption or not. At this point
9 I think it is too soon to say how that is going to turn out,
10 it could go either way. I think the process that has been
11 suggested of submitting a letter to DTSC to get a resolution
12 is a good way to resolve the issue so that we'll know either
13 it does or it does not qualify in DTSC's eyes with EPA's
14 oversight.

15 COMMISSIONER SHARPLESS: I think that there's some
16 unanswered questions and the only way that we're going to
17 resolve them -- They are answered to you but there seems to
18 be issues which you feel can be dealt with. We need to show
19 a way to address those and resolve them in our record. And
20 perhaps the best way is to write this letter to the
21 Department and get some response.

22 MR. THOMPSON: If I may, Commissioner. It is
23 gratifying to know that the unions believe we are infallible
24 but in actual fact we do make mistakes. We would intend to
25 sponsor into the record when the appropriate time comes the

1 correct language that reflects our views and reflects what we
2 believe to be true and will not sponsor things that we don't
3 believe to be true. So we will be revising the --

4 COMMISSIONER SHARPLESS: Okay, I appreciate that.

5 MR. THOMPSON: Second of all, while we have some
6 control over what we write to DTSC we don't really have any
7 control over whether or not DTSC will respond to us, we hope
8 they do, or when they will respond. And this goes to a
9 timing issue. In the staff's update the staff was
10 recommending, as I read it, that they want us to provide
11 documentation of the findings by DTSC by June 15th.

12 Keeping this in the perspective that apparently
13 both the staff and ourselves believe that a recycling
14 exemption is available we think that is a little harsh. We
15 can certainly write the letter to DTSC and talk to them as
16 soon as we can but I guess I would be surprised if we can get
17 a letter back from DTSC in -- And to hold us to that June
18 15th time frame as the staff is suggesting we think is a
19 little restrictive.

20 COMMISSIONER SHARPLESS: Okay, we haven't gotten to
21 the scheduling issues yet. I appreciate what you're saying
22 and that, again, we are dealing with multiple agencies that
23 are all on a sort of a time frame but we're going to try to
24 keep as much on track as we can. But I think we do need to
25 deal with the issues to make the record as strong as

1 possible. It seems to me that the only way that we can
2 really deal with this issue is to write that letter to the
3 Department of Toxic Substance Control. Commissioner Laurie,
4 did you want to add anything on that issue?

5 COMMISSIONER LAURIE: I have a question. I'm
6 unsure as to -- I don't have a good sense as to what specific
7 information we're requesting that we haven't received. Is it
8 information we need for our environmental analysis? Is it
9 approval from a state agency that has jurisdiction? Can you
10 more carefully define for me or just define for me what is
11 missing that we think we need.

12 MR. JOSEPH: Commissioner Laurie, since I opened
13 this Pandora's box maybe I can give you a succinct answer.

14 COMMISSIONER LAURIE: I'd rather hear from my staff
15 first, Mr. Joseph, thank you.

16 MR. BUELL: Specifically what we're looking for is
17 identification of whether or not a permit is required for the
18 hazardous waste. Excuse me, I'm presuming something not in
19 evidence here at this point. For the crystallizer system.

20 COMMISSIONER LAURIE: Okay. If a permit is
21 required would that be imposed as a condition on the project?
22 Is that how that would be treated?

23 COMMISSIONER SHARPLESS: Yes.

24 MR. BUELL: Yes.

25 COMMISSIONER LAURIE: Okay. So we need the

1 information to know whether or not we have to impose this
2 condition on the project?

3 MR. BUELL: Yes.

4 COMMISSIONER LAURIE: Thank you.

5 COMMISSIONER SHARPLESS: Now, Mr. Joseph, do you
6 have anything to add?

7 MR. JOSEPH: I should know better than to have any
8 lack of trust in the staff's answers, that was a perfect
9 answer.

10 COMMISSIONER SHARPLESS: Okay, thank you. Anything
11 more that you would like to add?

12 MR. WOLFINGER: I would just like to say for the
13 purposes of the Commissioners to understand what's going on
14 here. What occurs in this whole thing is water in the
15 cooling tower ends up building up impurities in it and you
16 take a slip stream of that off. And first what you do is you
17 heat it up to drive off some of the moisture and concentrate
18 it in a concentrator and then it goes in closed pipes and
19 tanks into a crystallizer which then takes all the water out.
20 Our original -- So it never comes out. I mean, it never is
21 disposed of.

22 COMMISSIONER LAURIE: Yes, but at that point you're
23 left with stuff.

24 MR. WOLFINGER: You're left with a solid. And that
25 is never -- That is not a discussion at this point in time,

1 there is no discussion. We have always characterized that as
2 a non-hazardous, five tons a day that is going to go off.

3 COMMISSIONER LAURIE: And we know what that stuff
4 is?

5 MR. WOLFINGER: Yes.

6 COMMISSIONER LAURIE: We can define it?

7 MR. WOLFINGER: Right. We have postulated what it
8 is. You don't really know, like Mr. Carroll said, until you
9 actually test it, but we have postulated what we believe it
10 is and it's being non-hazardous, okay. But the point of it
11 is that we're making up as if there is a waste stream between
12 when you're concentrating this down through a continuous
13 process. And one of the fundamental questions is, is it even
14 a hazardous waste at all when it is on a continuous process.
15 And that is a federal area and that was one of the things
16 that was earlier -- we talked about it. We don't even
17 believe this is a hazardous waste because it's not a waste,
18 it's part of a continuous operating process. It has steps in
19 the process.

20 COMMISSIONER SHARPLESS: Then it should be a really
21 easy letter for the Department to write. I mean, extremely
22 easy for the Department to write.

23 MR. WOLFINGER: Well, you will not get these people
24 to answer that kind of a question but that is what we believe
25 is the real key. We believe it's a red herring. That in

1 fact this is part of a continuous process and doesn't even
2 establish itself as a waste, a hazardous waste or any waste.
3 It is not a waste, it is part of a continuous, operating
4 process. So I want to make sure you understand what is going
5 on.

6 COMMISSIONER SHARPLESS: We do.

7 MR. WOLFINGER: We're saying this is a solid that
8 comes out the back end.

9 COMMISSIONER SHARPLESS: I do.

10 MR. WOLFINGER: I'm sorry?

11 COMMISSIONER SHARPLESS: I do. I have read your
12 papers, I have read your analysis and I do. What I am trying
13 to do is set the record straight and address all of the
14 issues that are raised and put them aside.

15 MR. CARROLL: And we will try to follow. Let me
16 just say, we thought we had done that. We did the analysis
17 which is all any other facility would be required to do. We
18 backed that up by calling the agency and running it through
19 with them and getting verbal confirmation that yes, you have
20 done the analysis right. So we thought we had done that, but
21 we will go the next step and try to get what we have gotten
22 verbally in writing.

23 COMMISSIONER SHARPLESS: Okay. Well, we obviously
24 have staff who has raised some concerns about wanting --
25 Since the Department of Toxic Substance Control is the agency

1 with that expertise, if you have done the analysis and they
2 review the analysis and they sign off on it then that is one
3 less thing on the checklist for this Committee to deal with.
4 And unless Staff tells me today that they absolutely have no
5 concerns, they have read your analysis and they have no
6 concerns, we don't even have to deal with the letter. But I
7 don't get that out of staff.

8 MR. BUELL: Staff is concerned that, basically that
9 the Department has not been willing to put their findings in
10 writing. It is just a matter of documenting. If they aren't
11 willing to put it in writing, why not. It seems like a --
12 The phraseology, it seems like a slam dunk to do so based
13 upon what they have identified at this point but we would
14 like to see it --

15 COMMISSIONER SHARPLESS: Do you feel yourselves
16 experts in this area?

17 MR. BUELL: We have staff that are experts. Ellen
18 Townsend-Smith is here that --

19 COMMISSIONER SHARPLESS: Could you make this
20 analysis and that determination on your own without the
21 Department of Toxic Substance Control?

22 MS. TOWNSEND-SMITH: No, we can't.

23 MR. BUELL: The answer I got was, no.

24 COMMISSIONER SHARPLESS: Okay.

25 MR. CARROLL: I guess I would just add that -- I

1 mean, it puts us in a difficult -- I mean, we have done the
2 analysis, we went to the agency with jurisdiction, they said,
3 yes, you did the analysis right, but that is not good enough.
4 I mean, we will try to get a letter but we can't control the
5 DTSC. If they say, no, I'm sorry, our practice is not to put
6 that kind of thing in writing, I mean. We're going to try to
7 get it but, you know, we feel like we're being really backed
8 into a corner. I mean, we have done the analysis, we have
9 confirmed the analysis with the agency with jurisdiction over
10 this. They have said yes, you did it right. It's sort of
11 like, when, you know. What does it take to convince, you
12 know, those with concerns?

13 COMMISSIONER SHARPLESS: Isn't DTSC a -- We're the
14 lead agency. Are they like a -- What is the terminology?

15 MS. HOUGH: A responsible agency.

16 COMMISSIONER SHARPLESS: A responsible agency. Are
17 they not a responsible agency?

18 MR. BUELL: Yes.

19 COMMISSIONER SHARPLESS: Are they not a responsible
20 agency? Don't they have certain requirements under CEQA?

21 MS. HOUGH: Yes.

22 COMMISSIONER SHARPLESS: Okay. Well if you --

23 COMMISSIONER LAURIE: Well -- I'm sorry.

24 COMMISSIONER SHARPLESS: Commissioner Laurie.

25 COMMISSIONER LAURIE: Responsible agencies are not

1 obligated to respond. Responsible agencies --

2 COMMISSIONER SHARPLESS: But if they are asked.

3 COMMISSIONER LAURIE: If they are asked, that's
4 right. And so the question in my mind is, should we ask. If
5 we need information, certainly normally it is the applicant's
6 burden to go out and get it. But if we are looking for
7 specific information and we need clarification I certainly
8 don't mind asking.

9 A question again is, are we permitted -- and this
10 is directed to staff. If the reasons for all these
11 communications are to allow us to reach a determination of
12 whether or not a permit is required as a condition to the
13 project can the project be conditioned on obtaining a permit
14 as may be required? Can you do that? The permit is not
15 going to be obtained until after certification so is there
16 anything unlawful in your view, staff, about imposing a
17 condition requiring a permit be obtained if required?

18 MS. HOUGH: You have to be able to make findings
19 about compliance with laws and that would include those laws
20 and regulations that apply to permits. And typically the way
21 -- In fact, there have been situations in the past where
22 there have been federal permits that have been not been
23 obtained prior to the Commission issuing an AFC.

24 The last couple of siting cases that I have been
25 involved in the Committees have been very much strongly in

1 favor of pulling that all into this process so that they have
2 a more, that they have the big picture. That they know
3 exactly what conditions are going to apply to the project
4 from each agency that is involved. So we're trying to do
5 that in this case based on our experience in the more recent
6 cases where attempts to put off -- And in those cases they
7 were federal permits, not other state agency permit
8 conditions, were met with disfavor from the Commission.

9 COMMISSIONER LAURIE: Well, I don't have --
10 Commissioner Sharpless, I don't have a problem. I don't know
11 that everybody likes the protocol or not but if the parties
12 can agree on the correct question I don't mind having us ask
13 another state agency the question and hopefully they would
14 respond. I certainly don't have a problem with that.

15 COMMISSIONER SHARPLESS: I think Mr. Buell said
16 that he would do that. Did you say that, Mr. Buell? Or did
17 you say you were following up on USEPA? Perhaps I jumped the
18 gun here.

19 MR. BUELL: We had made a verbal request of the
20 Department to put in writing their findings and the
21 Department was reluctant to do so, to respond to a third
22 party. Basically, they deal with applicants that are
23 responsible for their projects rather than other state
24 agencies and responding to state agencies. Certainly we
25 could attempt to do that again, make a request to the

1 Department in writing requesting their findings on the
2 exemption.

3 COMMISSIONER SHARPLESS: So they have already told
4 you that they would prefer to have it direct from the
5 applicant.

6 MR. BUELL: A request to do so, yes.

7 MR. THOMPSON: We intend to make that request.

8 MR. CARROLL: We'll do it.

9 COMMISSIONER SHARPLESS: Okay. That would be very
10 helpful, I think. Then we can put that one aside.

11 MR. BUELL: Yes.

12 COMMISSIONER SHARPLESS: Because otherwise, when
13 you get into the adjudicatory process and issues are
14 identified that are unresolved, you swear under testimony
15 about the facts of the case and we look at the expertise and
16 the background of those witnesses. I would prefer to have
17 the state department who is responsible for this issue area
18 to have signed off on that issue. I think it just makes for
19 a stronger case and allows the applicant to go forward with
20 one less issue hanging over their head. It saves money in
21 the long run, Mr. Wolfinger.

22 MR. WOLFINGER: We were always willing to write the
23 letter, our point was, we're not sure we can get an answer.

24 COMMISSIONER SHARPLESS: When you're going to get
25 it, yes. We'll try to help along those lines.

1 MR. WOLFINGER: We may need the muscle of the
2 Commission.

3 COMMISSIONER SHARPLESS: That is a sister agency,
4 we'll see what we can do.

5 **FAA**

6 Okay, let us go -- I think this is a relatively
7 easy one. Why don't we try the FAA. Can you all smile and
8 say, job well done?

9 MR. WOLFINGER: I'd like to ask Andy Welch to
10 respond to the questions on the land use and visual for the
11 FAA. And also talk about the letter for the lights.

12 MR. WELCH: Okay. There's several issues from the
13 FAA. Basically, the FAA submitted the letter on May 5th that
14 I think was reflected in the staff's report number four dated
15 May 8th. It indicated that all the questions that have
16 arisen were reviewed again by that agency and that they
17 believe -- Their phrase is that they -- No changes to the
18 condition, that they are not changing their original, no
19 hazard designation.

20 Further, there was a question raised on the visual
21 issue about the lighting for the poles. There was a
22 misunderstanding, I believe, on the part of the staff that
23 dealt with the poles along El Evado Road. That since they
24 are on the former Air Force Base that they would fall under
25 the requirement that all lighting on airport property -- that

1 all electric transmission poles on airport property have
2 lighting on them, construction lighting.

3 They missed a distinction. The airport property
4 under the FAA is a smaller area than the entire former Air
5 Force Base and it basically in the area of our project goes
6 from along Phantom Street up toward the railroad and
7 therefore the El Evado portion of the poles are not on
8 airport property. So they were not referred to.

9 COMMISSIONER SHARPLESS: It sounds as though we
10 have dealt with that issue.

11 MR. BUELL: Yes.

12 COMMISSIONER SHARPLESS: Any other issues, staff?

13 MR. BUELL: Staff would just like to point out that
14 our Preliminary Staff Assessment that was filed last Friday
15 does not incorporate or reference the letter from FAA or
16 discuss the visual aspects of the lighting requirements. We
17 have a workshop scheduled on the 28th where Visual will be a
18 topic for discussion. We can talk in greater detail at that
19 time.

20 COMMISSIONER SHARPLESS: A topic for discussion, I
21 guess. It's fairly well-resolved.

22 MR. BUELL: Yes.

23 COMMISSIONER SHARPLESS: From everything I read
24 this is fairly well-resolved.

25 MR. BUELL: Yes.

1 COMMISSIONER SHARPLESS: Good job. Anybody else?
2 Mr. Joseph?

3 MR. JOSEPH: (Nodded).

4 COMMISSIONER SHARPLESS: No? Okay. Stan, is there
5 any other issues in that broad topic area?

6 HEARING OFFICER VALKOSKY: Yes, that's it.

7 COMMISSIONER SHARPLESS: Those are they. Okay,
8 fine. Let's go next to the Gas Pipeline.

9 **GAS PIPELINE**

10 MR. WOLFINGER: Do you want us to talk?

11 COMMISSIONER SHARPLESS: Yes.

12 MR. WOLFINGER: Okay.

13 COMMISSIONER SHARPLESS: Please.

14 MR. WOLFINGER: Let me just start off and then I'll
15 ask Amy Cuellar from RMI to discuss. When we got into this
16 project we had looked at where some existing pipelines were
17 going north out of the project and they were owned by
18 Southwest Gas; there is an existing pipeline on the
19 Hillendale Road. There is also on this road that was going
20 north, directly north from our project to intersect with two
21 major pipelines, PG&E and Kern River Mojave lines, there was
22 also cable along -- fiber optic cable and those type of
23 things.

24 So we had assumed, and it turned out to be an
25 incorrect assumption, that placing another pipe along this

1 road would not be a significant problem, an issue. Well, and
2 that was the route that we discussed and had laid out in
3 front of the staff and the Commission.

4 It turns out that in fact that although there are
5 utilities along this road in the interim between--and I don't
6 know how the cable got in there because that's new but the
7 pipeline is like 40 years old or 30 years old--they have
8 redesignated that area as being prime habitat for the desert
9 tortoise. And in fact they have allocated -- Because there
10 is a need for north/south corridors in that area of the state
11 they have allocated other areas to be what is called *utility*
12 *corridors* where they--this is the BLM and US Fish and
13 Wildlife--where they would like to see utilities placed in
14 these utility corridors recognizing that there is a need to
15 cross the desert and prime habitat in north/south commerce.

16 As a result we have changed where we are building
17 that pipeline. And I made a phone call but we have not laid
18 out the route to put it into a map which we will try to do
19 shortly. But basically we're going over and using an
20 existing BLM corridor along what is called Route 395. It's
21 about another five or six miles to go over to that corridor
22 and go up. So we are in the process of surveying that
23 corridor and doing that.

24 In addition we also felt that because we were
25 making this change and the fact that the permitting

1 consultant, who we believe is a good consultant but was not
2 familiar with the territory where we were at, that if we were
3 going to meet a timetable of June the 15th they were not able
4 to muster the resources nor have the background and those to
5 accomplish the tasks that needed to be accomplished. So RMI
6 has taken over the permitting responsibility for that and
7 they are the ones that have permitted the other linear
8 facilities along with the facility itself at the High Desert.

9 So I want to give you that preamble because there
10 are some changes that have occurred there. And Amy is the
11 Project Manager for that and, Amy, it is now your turn.

12 MS. CUELLAR: Again, I'm Amy Cuellar, I'm a
13 consultant for the project. We intend to supply on June 15th
14 the required 125 copies of all the engineering and
15 environmental information for this new gas pipeline route.
16 The information contained in that submittal will not only
17 meet the CEC's regulations but as well as what was addressed
18 as informational requirements in the staff's status report
19 number four.

20 In the next week the project intends to file with
21 the Bureau of Land Management the official right of way grant
22 permits with that agency. That kind of starts off the
23 official process with the Bureau of Land Management. We have
24 been in consultation informally both with BLM and formally
25 with Fish and Wildlife Service and are in the process now of

1 trying to get a meeting with both those agencies. We're
2 still throwing around some tentative dates but anticipate a
3 meeting being scheduled in the next few weeks to talk about
4 each of those agencies' federal requirements, permitting
5 requirements, and how best to streamline those processes.

6 COMMISSIONER SHARPLESS: Do I understand from what
7 Mr. Wolfinger just said that it is now on a different
8 project? The information that you are going to submit, is
9 that going to be on the --

10 MR. WOLFINGER: A different route. The route --

11 COMMISSIONER SHARPLESS: It's on a different
12 route --

13 MS. CUELLAR: Yes.

14 COMMISSIONER SHARPLESS: -- than the one that
15 currently is in the application.

16 MR. WOLFINGER: That's correct.

17 COMMISSIONER SHARPLESS: So when you submit the
18 information that has been requested by CEC staff it will be
19 based on this new route?

20 MR. WOLFINGER: That's correct.

21 MS. CUELLAR: Yes.

22 COMMISSIONER SHARPLESS: And as I understand it
23 this new route is within corridors that have been designated
24 for utilities.

25 MS. CUELLAR: Yes, completely within.

1 COMMISSIONER SHARPLESS: Okay. That puts a
2 different slant on the issues that you have been dealing
3 with. I guess the other issue would be that certainly you
4 have dealt with some of the questions of location, you have
5 dealt with the data issues, you have dealt with starting the
6 process under federal agencies. But is there still a need to
7 have an MOU between us and BLM to do a joint document,
8 Mr. Buell?

9 MR. BUELL: Yes, it is my understanding that if the
10 pipeline does cross BLM land, and it is likely to do so, that
11 we would need to enter into an MOU to iron out the details of
12 joint environmental documentation for the project.

13 COMMISSIONER SHARPLESS: And when do we take that
14 step?

15 MR. BUELL: We will do so as soon as we have a
16 slightly better understanding of where the -- of what the
17 proposal is.

18 COMMISSIONER SHARPLESS: So that would be when the
19 information came in on June 15th?

20 MR. BUELL: I think we would like to try doing that
21 -- meeting with those agencies prior to that.

22 MR. WOLFINGER: We'll supply a map, I mentioned
23 earlier. We'll supply a map earlier. I don't have it today
24 because the corridor is like 400 feet wide and we're not sure
25 if we are on the right side of the corridor or the left side.

1 We would like to -- When we present something we'd like to
2 have it. So I'm thinking we're looking by the end of this
3 week to have a definitive.

4 MS. CUELLAR: Yes. Actually, the engineers working
5 on this project are really out there today flagging this
6 pipeline so our specialists can go out and continue on with
7 their surveys.

8 MR. WOLFINGER: And we'll supply that information.

9 COMMISSIONER SHARPLESS: And are the owners of the
10 pipelines -- You mentioned who would be the owners of this
11 pipeline. Would those be the same owners?

12 MR. WOLFINGER: We're suspecting that Southwest --
13 Yes, our intention is Southwest Gas is going to be the owner
14 as they are the owner of the other pipeline, we are just
15 doing the permitting for it. And Steve Frankiewicz back here
16 from Southwest Gas, he's the Project Manager and his people
17 are engineering it. They have a company that is engineering
18 it and we're providing the environmental permitting for that
19 work.

20 COMMISSIONER SHARPLESS: Commissioner Laurie.

21 COMMISSIONER LAURIE: Question, clarification as to
22 process. You have indicated that your environmental
23 documentation will be submitted by June 15th.

24 MS. CUELLAR: Yes.

25 COMMISSIONER LAURIE: That is good news to me but

1 let me ask staff. You have indicated that your understanding
2 is you have to enter into an MOU with the feds, to do what?

3 MR. BUELL: To establish what needs to be included
4 in our environmental document and in essence in our FSA in
5 order to ensure that it is compatible with federal, I believe
6 it's NEPA requirements.

7 COMMISSIONER SHARPLESS: Isn't it like a joint
8 environmental impact?

9 MS. HOUGH: Yes.

10 MR. BUELL: Yes.

11 COMMISSIONER SHARPLESS: So rather than having the
12 feds do one and us do another we combine our efforts. Ask
13 the same questions, do the same analysis so it becomes a
14 combined document for that stretch.

15 MR. BUELL: Yes.

16 COMMISSIONER LAURIE: Did the feds do an
17 environmental analysis when they created this utility
18 corridor?

19 MS. HOUGH: We don't know.

20 MR. BUELL: One thing that I wanted to point out is
21 we --

22 COMMISSIONER SHARPLESS: Well, let me ask something
23 along what Commissioner Laurie did. They do something called
24 a Habitat Conservation Plan or, you know. Was the Habitat
25 Conservation Plan done for that particular corridor?

1 MS. CUELLAR: That I don't know but I do believe we
2 will be required to do a Habitat Conservation Plan for this
3 project to meet Fish and Wildlife Service requirements.

4 COMMISSIONER SHARPLESS: Okay, because that was
5 kind of getting to Commissioner Laurie's question. If this
6 has already been designated as a utility corridor, assuming
7 that the feds understood that there might be a need for
8 utilities to pass over that land, then they must have done
9 something to designate that corridor.

10 COMMISSIONER LAURIE: I would anticipate that.

11 COMMISSIONER SHARPLESS: And I think that's
12 precisely why the applicant has reconsidered the location.

13 MR. WOLFINGER: Partly, but I think it's more of a
14 physical designation then it is saying -- We still have all
15 the requirements to go out and study the botany and what's
16 there so I don't think it does anything particularly to
17 reduce it. It's just that if you go into a prime habitat
18 place then they don't want to do it. So they want you to put
19 them all there but I don't think it resolves the ability for
20 RMI's staff to go out there and still study, you know,
21 tortoises and desert squirrels and the botany, right.

22 COMMISSIONER LAURIE: Have you folks -- Have you
23 folks already done that or will you do that before June 15th?

24 MS. CUELLAR: We are in the process of doing that
25 now.

1 COMMISSIONER LAURIE: Okay. So you believe that
2 your submittal will basically be complete as far as you folks
3 are concerned regarding an environmental analysis of the
4 pipeline.

5 MS. CUELLAR: Yes, with the possible exception of
6 the wildlife portion of the biological resources section. We
7 do intend to have all the data sheets submitted by the June
8 15th deadline but those surveys are quite intensive and are
9 going to take quite a long time period to complete with this
10 long pipeline. So there is a question as to whether or not
11 the write-up for the wildlife portion of the biology will be
12 completed by the 15th but we will supply all the field data
13 sheets.

14 COMMISSIONER SHARPLESS: Aren't there also
15 limitations on lands like these for when you can do surveys
16 and isn't there a survey deadline of May 31st?

17 MS. CUELLAR: Yes. Well, there was a survey
18 deadline of May 31st and we have been in coordination with
19 all the agencies on that issue. And because it has been such
20 a wet year that survey window has been expanded. So we
21 believe we're still in that window.

22 COMMISSIONER SHARPLESS: Expanded to when? Do you
23 know how far?

24 MS. CUELLAR: Their estimate is mid-June. The
25 wildlife surveys for desert tortoise and Mojave ground

1 squirrel, actually the window for those surveys ends at the
2 end of June so we're still fully in that window as well.
3 It's the botanical that has a smaller window but it's been --

4 COMMISSIONER SHARPLESS: I guess El Niño helped
5 somebody.

6 MS. CUELLAR: Yes, it did.

7 COMMISSIONER SHARPLESS: Okay.

8 HEARING OFFICER VALKOSKY: Do you have any idea of
9 how long the federal review process will take? Both the
10 right-of-way process and the environmental assessment
11 process.

12 MS. CUELLAR: I think staff estimated in one of
13 their status reports possibly taking as long as 150 days to
14 complete that process. What we're hoping is getting these
15 meetings scheduled with both federal agencies in the next few
16 weeks is we're going to be able to streamline that process
17 and meet both their requirements but only supply them with a
18 limited amount of actual documents.

19 HEARING OFFICER VALKOSKY: Okay. And will staff be
20 involved in this process pursuant to an MOU, or even before
21 the MOU just informally?

22 MR. BUELL: Certainly staff will be in contact with
23 US Fish and Wildlife and Department of Fish and Game
24 coordinating our review of what needs to be conducted in
25 terms of surveys but also with BLM.

1 HEARING OFFICER VALKOSKY: So the answer is, yes.

2 MR. BUELL: Yes.

3 HEARING OFFICER VALKOSKY: Yes, okay. Will there
4 be any landowner identification and noticing wrinkles in the
5 new pipeline route? Part of the information requirements
6 indicate that you have to provide a list of the landowners
7 within I believe 500 feet of the center line.

8 MS. CUELLAR: Yes, all the information that we
9 intend to supply on June 15th will be a combination of the
10 environmental requirements as well as the engineering
11 requirements. Part of that does include the landowner
12 information.

13 HEARING OFFICER VALKOSKY: Landowner
14 identification, okay. Then staff, I assume your position is
15 that will require supplemental noticing of the landowners?

16 MR. BUELL: Yes.

17 HEARING OFFICER VALKOSKY: Okay. And either a
18 workshop or an informational presentation by the Committee on
19 the landowners affected by the new pipeline route?

20 MR. BUELL: That's a possibility.

21 HEARING OFFICER VALKOSKY: Okay. Procedurally does
22 staff have -- What is staff's position as to the procedural
23 mechanism for including or introducing the pipeline into this
24 particular AFC? Is it your position that this is something
25 that will require a separate data adequacy review and

1 acceptance by the Commission or is it something that the
2 Committee will just, once the data is submitted, treat as
3 part of the project?

4 MR. BUELL: It is our position that it would not
5 require a data adequacy review. We have based our
6 informational requirements on our data adequacy guidelines
7 but it does not require a determination by the full
8 Commission.

9 HEARING OFFICER VALKOSKY: Okay. Does it require a
10 determination by staff?

11 MR. BUELL: I think --

12 MS. HOUGH: We'll let you know if we don't have
13 enough information to do the analysis.

14 HEARING OFFICER VALKOSKY: That's exactly where I'm
15 going, Ms. Hough. When will you let the Committee know?

16 MS. HOUGH: Well, after you get the information on
17 June 15th. You're asking for a certain number of days after
18 June 15th --

19 HEARING OFFICER VALKOSKY: Yes, I am.

20 MS. HOUGH: -- to get some sort of a status report?

21 HEARING OFFICER VALKOSKY: Yes. And the same will
22 obviously go for CURE too as to whether they view the need
23 for any additional information after we see the submittal.

24 (Thereupon, tape 1 was changed
25 to tape 2.)

1 COMMISSIONER SHARPLESS: I just heard that she is
2 not going to be able to get absolutely everything, all the
3 survey data by June 15th. So we already know that the answer
4 is going to be they won't have everything.

5 MS. CUELLAR: You will have the survey data sheets
6 but we can't guarantee you will have the complete write-up at
7 that point, no.

8 MR. WOLFINGER: The data will all be in.

9 MS. CUELLAR: But I also wanted to mention that we
10 are in the process of preparing these documents going back to
11 data requests that we have received both from staff and from
12 intervenors and taking those into account when we're doing
13 the write-ups for this gas pipeline. So there's things we
14 had to address for other linears on the project, we are
15 intending to address those at this point as well.

16 COMMISSIONER SHARPLESS: When beyond June 15th
17 might we get the write-ups?

18 MS. CUELLAR: It would only be the write-up for the
19 wildlife portion of the biological resources section and it
20 would be prior to June 30th, July 1st. You will have the
21 complete botany portion of that section by the 15th of June.

22 COMMISSIONER SHARPLESS: Right.

23 HEARING OFFICER VALKOSKY: So, Mr. Buell, I'm still
24 waiting for an answer.

25 MR. BUELL: Okay. The question being, when could

1 staff provide an indication of whether or not we believe the
2 information is complete.

3 HEARING OFFICER VALKOSKY: Correct.

4 MR. BUELL: I'm going to take a stab and say within
5 three weeks of receiving that information. So that would be
6 June 15th plus three weeks.

7 HEARING OFFICER VALKOSKY: Plus three weeks, okay.

8 MR. BUELL: Which would be the first week in July,
9 I believe.

10 HEARING OFFICER VALKOSKY: Mr. Joseph, is that a
11 good approximation of the time that CURE would anticipate for
12 being able to review the information?

13 MR. JOSEPH: I'm willing to say three weeks is a
14 good estimate. It's a little hard to say without seeing how
15 much volume of information we're going to get.

16 HEARING OFFICER VALKOSKY: I understand that, I
17 understand that, but for the purpose of present discussion.

18 MR. JOSEPH: For the purpose of present discussion
19 three weeks seems like a reasonable estimate. I did want to
20 address a couple of other things that have come up in the
21 discussion along the way here. I think Ms. Cuellar said that
22 they will need a Habitat Conservation Plan and they are
23 hoping to shorten the 150 day estimate that staff had. I
24 would first note that that's 150 days after the Habitat
25 Conservation is prepared and the environmental analysis is

1 done. And having some experience with these HCP's it is
2 inconceivable that if they have to do an HCP that it won't
3 affect the schedule in this case. These things take a long
4 time.

5 COMMISSIONER SHARPLESS: Yes. And I think we are
6 going to be dealing with the realities of the schedule a
7 little bit later.

8 MR. JOSEPH: Right. I think there is one other
9 item which is related to this but somewhat different. We
10 have talked so far about the BLM and Fish and Wildlife
11 Service approval of this linear corridor for the new gas
12 pipeline. At the April 30th workshop, two days after our
13 last Committee Conference, the applicant stated that they had
14 not yet applied for permits under Section 10 of the
15 Endangered Species Act for any of the other linears.

16 Now the conversations with that may have started
17 since that time but the other linears also need to receive
18 approvals and apparently that process as of three weeks ago
19 had not even begun. So I think that has to be part of the
20 scheduling discussion because those aspects will require a
21 substantial amount of time from Fish and Wildlife Service.

22 COMMISSIONER SHARPLESS: Staff, do you have any
23 comment on that? I didn't see that notation in your status
24 report.

25 MR. BUELL: I'm looking at our May 15th status

1 report, page three, and I believe we did discuss the need for
2 the applicant to provide information for the 10(a)(1)(b)
3 permit and/or the Section 7 consultation by BLM, depending
4 upon exactly what regulations would apply in this case or
5 what agencies would assume responsibility for review of the
6 project, either in part or in total. So we concur that there
7 is a need to file information with the US Fish and Wildlife
8 Service and it is not just for the additional pipeline but
9 for other linears.

10 COMMISSIONER SHARPLESS: Did you calculate that
11 into your schedule that you outlined in your May 15th?

12 MR. BUELL: I believe that we had identified that
13 as a -- that the applicant needed to provide it by June 15th.
14 The information to the agencies that was required for those
15 permits and consultations. We did not require the applicant
16 to actually have provided those agencies analysis at that
17 point in time but to actually provide the information to the
18 federal agencies.

19 COMMISSIONER SHARPLESS: And when in your schedule
20 did you calculate the analysis being included in our process?

21 MR. BUELL: I believe the footnote on page three
22 indicates that it -- the last sentence. Footnote number two
23 indicates that it could be as much as 150 days for that
24 process. That would place it very late in staff's schedule
25 for this project. Post-hearings, perhaps.

1 This goes again to the issue, I think, that Caryn
2 Hough raised earlier about there being a desire of past
3 committees to have some indication that federal agencies are
4 likely to make affirmative findings on projects. There is no
5 specific regulation requiring that that happen but it's a
6 matter of the Committee's preference on when or what level of
7 information they need from those agencies that the project
8 would likely be approved. Obviously, if those agencies were
9 to deny the permit then the project couldn't be constructed.
10 Caryn, do you have something you want to add?

11 MS. HOUGH: Just that in addition if the federal
12 agencies were to impose permit requirements that the Energy
13 Commission didn't impose they would still be required of the
14 project, which would make our permit and the federal permits
15 inconsistent, which is something that we would recommend that
16 you avoid.

17 COMMISSIONER SHARPLESS: I thought that we were
18 required to look at all the applicable federal, state and
19 local and somehow this is like --

20 MS. HOUGH: You are required to do so and to make
21 findings about whether or not the applicant is going to be
22 able to comply with them. What has happened in past siting
23 cases with federal permits is that the application process is
24 started and the Committee has gone ahead and held hearings
25 and taken evidence that the process has started and that

1 everything is going well. And they use that, the Commission
2 uses that as a basis for a conclusion that the project is
3 likely to comply.

4 You typically have a good sense of what conditions
5 may or may not apply at the time that you write your final
6 decision. It gets back to that question of, do you have
7 evidence in the record that indicates to you that a project
8 is likely to be able to comply and if so under what
9 conditions.

10 COMMISSIONER SHARPLESS: Well, have these been
11 projects that have been dealing with the Endangered Species
12 Act?

13 MS. HOUGH: The specific permits that I'm aware of
14 are water permits and PSD permits, which now, of course, are
15 largely delegated back to the state and to the individual
16 districts. Mr. Valkosky may be able to provide you with
17 more --

18 COMMISSIONER SHARPLESS: I think that is a whole
19 different story than the Endangered Species Act myself
20 because the Endangered Species Act, as we know, is one of
21 those issues that can be very contentious.

22 MS. HOUGH: That's correct, it can be, and that's
23 why we encourage --

24 HEARING OFFICER VALKOSKY: Typically it would also,
25 if an endangered species is involved, have in the record at

1 the time of our evidentiary hearings a biological opinion if
2 appropriate from the California Department of Fish and Game.
3 I cannot recall a case where you have had issues other than
4 the PSD permit and the final permit from the regional water
5 quality control board outstanding at the time of
6 certification and also at the time of hearings.

7 COMMISSIONER SHARPLESS: And as you say, Prevention
8 of Significant Deterioration permits are something that are
9 generally delegated back, especially in California if you are
10 in any district that is non-attainment.

11 MS. HOUGH: Right. I'm referring back to cases
12 that happened a number of years ago before there was as much
13 delegation as there has been.

14 COMMISSIONER SHARPLESS: But I think it leaves
15 altogether the wrong impression if we hold out the
16 possibility that we could go forward on a project without
17 resolving these issues.

18 MS. HOUGH: We would prefer to if -- Again, it is
19 the same sort of issue that we talked about, letters of
20 intent and letters to serve. We want to have confidence that
21 the agencies that are involved are going to issue the permit
22 and we want to have confidence that we know what the
23 conditions are because they will have an effect on staff's
24 assessment of environmental impacts.

25 MR. JOSEPH: For the Committee's benefit, in the

1 other pending siting case, the Sutter Power Project Case, all
2 of this Endangered Species Act and coordination with the
3 federal agency was done at the beginning. So the plan is
4 that the Commission's documents will be the draft and final
5 environmental impact statements for the case and the
6 projected schedule is that there will be a biological opinion
7 which is included right up front. It's because the process,
8 all the process was started at the beginning and done in a
9 coordinated fashion, coordinated and consistent fashion.

10 COMMISSIONER SHARPLESS: That's nice to know but we
11 are what we are and we're going to deal with what we can deal
12 with. I think it's just that we have got to be very clear
13 with everybody in this room what the expectation is. I don't
14 want to leave sort of the wrong expectation that we might be
15 considering that we could possibly permit or certify this
16 project if there were still those issues hanging fire with
17 respect to crossing BLM territory.

18 MR. THOMPSON: I would submit, Madam Commissioner,
19 that we are really too early to make any kind of decision on
20 that and I would urge that we have some months to determine
21 if we have issues or not have issues and to see if BLM --

22 COMMISSIONER SHARPLESS: You know, I'm not sure
23 that we have months. If you look at the way the schedule is
24 mapped out the more time that we spend waiting to resolve
25 issues the more time that -- We are not discussing the

1 schedule yet but we can't help, but. The more time that it
2 means we have to push the schedule back. And that's really
3 what it means.

4 MR. THOMPSON: I don't believe we're waiting.

5 COMMISSIONER SHARPLESS: Pardon me?

6 MR. THOMPSON: I don't believe we're waiting on
7 these issues, I think we are going forward on the issues.
8 All I'm suggesting is that it is hard to sit here in May and
9 for us to tell you what we are going to put into the record
10 in August, September or October or how federal agencies will
11 react later this year.

12 COMMISSIONER SHARPLESS: Yes, but we have to build
13 the record in order to put together the FSA. Well, staff has
14 to build the record.

15 MR. THOMPSON: Staff.

16 COMMISSIONER SHARPLESS: Staff has to build the
17 record. This is highly unusual to have these many status
18 conferences but the Commission is really attempting to
19 provide as much assistance to this applicant as we possibly
20 can. But in order that we can make sure that when the
21 application goes to adjudication and finally to the
22 Commission that we have a strong record that we can make a
23 decision we are making extreme efforts here to try to
24 facilitate the process.

25 And I appreciate what you're saying, Mr. Thompson,

1 but time is wasting here and I'm real concerned about it. We
2 already have a preliminary draft, a first draft staff
3 assessment, we will have a second one, we will have a final
4 one. And we want to -- You know, we would like it as
5 complete as we can at the time we do that for our
6 adjudication process. And if we're talking about maintaining
7 the one year clock on this project we have already passed by
8 significant deadlines. So scheduling is something we have
9 later on in the agenda but it seems like every time we talk
10 about an item we get back into it.

11 MR. THOMPSON: I would like to point out that the
12 record in front of you consists not only of what the staff
13 puts in but what other parties, including the applicant put
14 in. The time to put in testimony is not now or June or July,
15 it is August. To pin everything on the Staff Analysis puts
16 us in a difficult position, especially when the requirements
17 keep growing, as we may point out later. So I would just
18 point out that all of the testimony --

19 COMMISSIONER SHARPLESS: I don't think the
20 requirements have grown.

21 MR. THOMPSON: Indeed they are.

22 COMMISSIONER SHARPLESS: Because the new pipeline
23 proposal that came in came in well after this project was
24 deemed complete.

25 MR. THOMPSON: That is true.

1 COMMISSIONER SHARPLESS: Right. You know, I think
2 that the information requirements that we are asking for are
3 not growing, what the problem is is trying to get closure on
4 the issue and the continued questions of trying to get that
5 information so we can do a proper analysis.

6 MR. THOMPSON: I was not talking about Biology when
7 I made that statement. If we get into Air Quality I can
8 point out where I think the requirements have grown. But
9 what I really wanted to say is that when you as the
10 Commissioners assigned to this case and Judge Valkosky take
11 the evidence it is going to be from all of the parties and it
12 is going to be the best evidence we have at the time.

13 COMMISSIONER SHARPLESS: Don't you think it's
14 within the applicant's best interest to make sure that when
15 we start that adjudication process that the analysis is as
16 complete as possible and not try to build the case entirely
17 through the adjudication process?

18 MR. THOMPSON: Yes, and I believe --

19 COMMISSIONER SHARPLESS: Don't you think that is in
20 the best interest of the applicant?

21 MR. THOMPSON: Yes.

22 COMMISSIONER SHARPLESS: Okay.

23 MR. THOMPSON: Absolutely.

24 COMMISSIONER SHARPLESS: Then we're agreed on that.

25 MR. THOMPSON: I'm pleased.

1 COMMISSIONER SHARPLESS: Okay. Okay, Stan. And
2 then I think I'm going to break at about 12 o'clock. We'll
3 come back, we'll do Air Quality, we'll do Scheduling, and
4 hopefully we'll be out of here within an hour and a half
5 after that. Okay.

6 HEARING OFFICER VALKOSKY: Just a couple of real
7 quick qualifying questions. Mr. Buell, when are you going to
8 start negotiating with the federal authorities for an MOU?
9 Could I have a date, an approximate date?

10 MR. BUELL: I don't have that planned in my
11 schedule so I -- As soon as possible. We have workshops
12 scheduled next week, it makes it difficult to plan such
13 meetings. We have two days committed to being in
14 Victorville.

15 HEARING OFFICER VALKOSKY: So within a week or ten
16 days? I mean, you know, I'm looking at a very short-term
17 type of thing?

18 MR. BUELL: Certainly within the first week of
19 June.

20 HEARING OFFICER VALKOSKY: Okay. How long would
21 you anticipate that process will take before you could
22 achieve an MOU?

23 MR. BUELL: Two to three --

24 HEARING OFFICER VALKOSKY: Obviously you have got
25 models available.

1 MR. BUELL: Probably two to three weeks.

2 HEARING OFFICER VALKOSKY: Okay. So we're looking
3 at an MOU somewhere around late June, approximately?

4 MR. BUELL: That would be my guess.

5 HEARING OFFICER VALKOSKY: Okay, thank you.

6 Ms. Cuellar, I just want to confirm my understanding. You
7 indicated that you are filing the right-of-way application
8 with BLM next week.

9 MS. CUELLAR: Within the week, within a week, yes.

10 HEARING OFFICER VALKOSKY: Okay, all right, within
11 a week. When are you filing the application for the Section
12 7 and/or 10 permits for the other linear facilities?

13 MS. CUELLAR: Well, it's our intent -- As I said,
14 we're trying to get meetings scheduled with Fish and Wildlife
15 Service and the Bureau of Land Management and it is our
16 intent to try and move this along as one project and not
17 separate out the gas pipeline from the other linears.

18 HEARING OFFICER VALKOSKY: Okay, so --

19 MS. CUELLAR: So it could all be permitted under
20 one.

21 HEARING OFFICER VALKOSKY: Right. So we're looking
22 at an approximate date mid-June? Is that the time frame
23 we're looking at? I'm just trying to get a handle on this.

24 MS. CUELLAR: I would say probably end of June.
25 We're continuing to work on our draft of our Habitat

1 Conservation Plan. Until this meeting occurs with BLM and
2 Fish and Wildlife Service there has been no official
3 determinations yet as to whether or not we will be required
4 under the Endangered Species Act to comply with Section 7 or
5 Section 10.

6 HEARING OFFICER VALKOSKY: Right, okay.

7 MS. CUELLAR: So that's the importance of trying to
8 get both these agencies together.

9 HEARING OFFICER VALKOSKY: Right, so --

10 MS. CUELLAR: It proved a little difficult.

11 HEARING OFFICER VALKOSKY: So actually we won't
12 know that for approximately a month; is that --

13 MS. CUELLAR: I would say a couple of weeks.

14 HEARING OFFICER VALKOSKY: Okay.

15 MS. CUELLAR: We're still throwing around some
16 tentative dates and people are trying to -- the agencies are
17 trying to clear their calendars. So there has been no
18 official determination made by either one of those federal
19 agencies.

20 HEARING OFFICER VALKOSKY: Okay, thank you.

21 COMMISSIONER SHARPLESS: Is that it, Mr. Valkosky?

22 HEARING OFFICER VALKOSKY: I think so.

23 COMMISSIONER SHARPLESS: Are there any other -- Are
24 there any other issues on the pipeline that we need to bring
25 up? Why don't we take a lunch break. We will be back here

1 at one o'clock. And as I said, we will -- I'm sorry.

2 MR. JOSEPH: I was just going to ask for your
3 indulgence to make that 1:15 if that is possible.

4 COMMISSIONER SHARPLESS: Okay, let's see. That
5 will shorten your testimony?

6 MR. JOSEPH: By 15 minutes.

7 COMMISSIONER SHARPLESS: Yes, okay fine, 1:15.
8 Thanks a lot.

9 (Thereupon, the luncheon recess
10 was taken off the record.)
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COMMISSIONER SHARPLESS: Okay. We're back, we're going to start, my colleague will be joining us shortly. As I indicated I think we have about two items left. We will start on Air Quality this afternoon.

MR. CARROLL: Commissioner, I did have one follow-up item from this morning. I have the cite that you requested on the delegation of the toxics program.

COMMISSIONER SHARPLESS: Good.

MR. CARROLL: It was delegated -- It appeared in the Federal Register on July 23rd of 1992 and the cite is 57 Federal Register 3-2-7-2-6 and it became effective on August 1st of 1992. That was the final authorization. There were some interim and partial authorizations prior to that but that was the final.

COMMISSIONER SHARPLESS: Fine, thank you very much, helpful. Okay, Air Quality. Is that you, Mr. Wolfinger?

AIR QUALITY

MR. WOLFINGER: Yes, it is.

COMMISSIONER SHARPLESS: Okay.

MR. WOLFINGER: Let's see. I did write a letter. Let's see, going through Air Quality. I did get a letter from Rick Buell saying what he would like to see in the letters of intent and I have instructed Mike to set us up some standard letters of intent and option agreements and

1 agreements, which we did. I notified -- Let's see, if this
2 was -- Let's see. I notified Stan on, I believe it was May
3 the 6th or 7th that we would have our letters of intent by
4 June 15th. So we have already started that process.

5 To give you an update, we have issued about five of
6 those letters of intent. I have met with four of the parties
7 personally and we are in the negotiations for those as we
8 speak. We have about two more letters to send off or three
9 more letters to send off and some more negotiations to do.
10 So that is proceeding.

11 We provided turbine data a day late on May the 12th
12 and the data was not complete. We were missing basically two
13 pieces of information, the start-up data on the Siemens
14 machines, although we had the full load data, and the start-
15 up data on the Westinghouse/GE updated, if they were giving
16 us any update, and we did not -- have not received that and
17 we're still in attempts to get that. But we did provide the
18 data, all the baseload data for all the machines, 100 percent
19 load data, and start-up data for Westinghouse, GE and ABB.

20 COMMISSIONER SHARPLESS: Thank you for that.

21 MR. WOLFINGER: The start-up data is not
22 guaranteed, it should be noted that it never is guaranteed by
23 the manufacturers. They don't guarantee start-up data, so
24 just as a point of reference on this. Let's see.

25 We also notified you that the Mojave Desert Air

1 Quality Management District was in the process of going
2 through the banking applications and that was progressing.
3 And I guess rather than speaking for them we have
4 representatives from there and I would suggest that we ask
5 them to give you the update at least. We did put something
6 in our thing but I think it's probably appropriate to ask
7 them for the update as to where they stand on that aspect.

8 And I think that is all the issues on -- Yes. The
9 PDOC has been issued on the 15th and I believe copies are
10 available outside and they have also been --

11 COMMISSIONER SHARPLESS: It arrived.

12 MR. WOLFINGER: Pardon me?

13 COMMISSIONER SHARPLESS: This morning from Dockets.

14 MR. WOLFINGER: Right. And we also in that interim
15 too we have -- When it became available to us where the SCR
16 vendors were looking at guaranteeing lower numbers we met
17 with -- And I think we -- I don't think we brought this up
18 with you because I think it was since then, I think we
19 brought it up down in Victorville. I think we mentioned to
20 Rick Buell that we had been talking with the SCR vendors,
21 specifically Inglehart and Mitsubishi, looking at what kind
22 of guarantees, what aspects they could do. And in the
23 interim period we have reduced the full load guaranteed
24 emission point from a 4.0 ppm for NO_x down to a 3.0 ppm for
25 NO_x and so notified the Mojave Desert Air Quality Management

1 District who has incorporated that into their PDOC that they
2 have submitted.

3 COMMISSIONER SHARPLESS: Okay, yes, I think you did
4 hit the points that we asked you to respond to in the Order.
5 I will just note that we did receive these and I see the
6 docket date is the 19th. I just received my copy this
7 morning so I have not had a chance to look through this.

8 MR. WOLFINGER: What was the 19th?

9 COMMISSIONER SHARPLESS: When we received the PDOC.

10 MR. WOLFINGER: Oh, the PDOC, that's right.

11 COMMISSIONER SHARPLESS: When we received the PDOC.

12 MR. WOLFINGER: Oh, I'm sorry, right.

13 COMMISSIONER SHARPLESS: So I haven't had a chance
14 to really look at this and see what is in it. Oscar, would
15 you like to come up and talk a little bit about perhaps where
16 you are in your process, when you think you might get your
17 FDOC about the emission reduction credit issue.

18 MR. HELLRICH: Well, the PDOC has a 30 day comment
19 period.

20 COMMISSIONER SHARPLESS: Right.

21 MR. HELLRICH: And we have stated that we intend to
22 have the final DOC issued on or about the 19th of July. If
23 your schedule calls for the 18th of July we can possibly do
24 that for you. I have brought Alan De Salvio from the
25 District who is working the ERC issue. If you care to have

1 him come up he can speak to you on that issue.

2 COMMISSIONER SHARPLESS: Okay, but just one last
3 point on the DOC and that is that you're expecting your board
4 to deliberate on it by the 19th and send it to us or is that
5 the date that has been set up for board deliberation or what?

6 MR. HELLRICH: No, there is no board deliberation
7 on a DOC.

8 COMMISSIONER SHARPLESS: No board deliberation on
9 the DOC. Do you have a workshop or a hearing process
10 involved in this?

11 MR. HELLRICH: If there are significant comments we
12 will call for one, yes.

13 COMMISSIONER SHARPLESS: Okay. So until you see
14 what comments you get you have not yet set up a hearing.

15 MR. HELLRICH: That's correct.

16 COMMISSIONER SHARPLESS: Okay. Thank you, Oscar,
17 thank you for coming. And the gentleman who was going to
18 come forward and talk about emission reduction credits?

19 MR. DE SALVIO: Alan De Salvio with the Mojave
20 Desert AQMD. We have to date received 11 applications for
21 emission reduction credits. We have acted on one and that
22 one is mentioned with the proposed letters of intent. That's
23 about all I can really say at this point. We are proceeding
24 with the remaining applications.

25 COMMISSIONER SHARPLESS: I think that the applicant

1 in their letter indicated that the air district had informed
2 them that they were working on applications for banked ERC's
3 and expected to process these for release by the end of May.
4 Was that a conversation with you and is that the processing
5 of all 11? What does that statement mean to you?

6 MR. DE SALVIO: That means that we expect to
7 indicate to those remaining 10 ERC applicants whether or not
8 their applications are complete or incomplete, by the end of
9 this month.

10 COMMISSIONER SHARPLESS: And then what is your
11 process after that?

12 MR. DE SALVIO: Then we have an extensive, possibly
13 very extensive in some cases, analysis process. It depends
14 on the nature of the application.

15 COMMISSIONER SHARPLESS: And that would be internal
16 analysis?

17 MR. DE SALVIO: Yes. Which culminates in the --

18 COMMISSIONER SHARPLESS: Would you be doing all 11
19 applications at the same time in the analysis or are you
20 staging them or how does that work?

21 MR. DE SALVIO: They are being -- They are being
22 dealt with sequentially.

23 COMMISSIONER SHARPLESS: Sequentially. So when you
24 say it is a long process, when do you think your process
25 might generate enough ERC's for this project?

1 MR. DE SALVIO: That's -- Well, we had issued --
2 Just to give you an example, one of the applications comes
3 from Mitsubishi Cement, that's one of the facilities in
4 question, and we issued to them prior to this date a letter
5 of incompleteness regarding their application. So I really
6 can't answer your question because we need to get a response
7 to that letter from Mitsubishi before we can even proceed
8 with the analysis. It's difficult to say. I feel that I
9 just really can't answer that. It shouldn't take too long
10 once we get enough information, I would say 30 to 60 days in
11 the case of Mitsubishi Cement. On the remaining applications
12 we have yet to even get to the completeness stage so I really
13 can't answer that.

14 COMMISSIONER SHARPLESS: Are there any other
15 agencies involved in your analysis besides yourself?

16 MR. DE SALVIO: No, we are the agency that makes,
17 that reaches the local decision; however, in the case of
18 Mitsubishi and I think every other proposed letter of intent
19 in this group, or application it's called, each action will
20 require notification of both ARB and EPA. And of course
21 we're required to address those comments as we would any
22 other public comments. So the possibility exists for some
23 further gyrations prior to filing a decision.

24 COMMISSIONER SHARPLESS: Well, can you give me an
25 idea then. Once you do your analysis and you find the

1 application is complete is that it for your agency and then
2 you notify the Air Board and USEPA and give them a comment
3 period?

4 MR. DE SALVIO: Yes, there is a -- Once we find an
5 application complete we are required by our rules to begin a
6 30 day notice period which also involves noticing ARB and EPA
7 depending on the nature of the application. And in the case
8 of the critical facilities for this project it's the size of
9 the application, and so of course for these four facilities
10 it will be large enough to notify those agencies. So there
11 will be a 30 day comment period. At the end of that period
12 we have the ability based on comments to then issue the
13 credits, the performance certificate. So it could be as
14 short as 30 days from the moment that we find the application
15 complete that credits would be available, that's the absolute
16 minimum.

17 COMMISSIONER SHARPLESS: Okay. Well, that presents
18 somewhat of a dilemma here for the applicants and us. I
19 appreciate you coming up. Are there any questions of this
20 gentleman? Mr. Joseph.

21 MR. JOSEPH: If I understand it your process is you
22 send out a letter of incompleteness, the applicant responds
23 with the information that you requested, you then do the
24 analysis that you said could be extensive or very extensive.
25 Then you issue a proposed ERC determination including a

1 revised permit for the facility for a 30 day comment period.

2 MR. DE SALVIO: The permit chain would be required
3 prior to the issuance and I would say in most cases.

4 MR. JOSEPH: And then you evaluate whatever
5 comments you get and make a final decision?

6 MR. DE SALVIO: Right.

7 COMMISSIONER SHARPLESS: Staff?

8 MR. BUELL: I have just one question. If the
9 minimum time is 30 days, the maximum time assuming a complete
10 application, could we guess at that?

11 MR. DE SALVIO: No, because --

12 MR. BUELL: Okay.

13 MR. DE SALVIO: But of course any extensions as far
14 as agreements are, an understanding on both parties, are from
15 AQMD and the applicant. But, you know, in the case of some
16 of these applications there's some issues that need to be
17 resolved. I mean, we're going to make every effort we can to
18 look at them promptly.

19 MR. BUELL: Okay, thank you.

20 MR. JOSEPH: One other question.

21 COMMISSIONER SHARPLESS: Mr. Joseph.

22 MR. JOSEPH: Do you remember when you sent the
23 incompleteness application to Mitsubishi?

24 MR. DE SALVIO: The letter of incompleteness was
25 this week. I think we acted on a Public Records Act prior to

1 its being sent, we'll provide a copy to you.

2 MR. JOSEPH: Thank you.

3 COMMISSIONER SHARPLESS: Yes, Stan.

4 HEARING OFFICER VALKOSKY: What's your level of
5 confidence that you will have decided whether or not the
6 applications are complete by the end of this month?

7 MR. DE SALVIO: Any particular applications you
8 are --

9 HEARING OFFICER VALKOSKY: No, I mean just the ten
10 outstanding applications. Are you sure that by the end of
11 this month you will have decided whether or not those
12 applications are complete?

13 MR. DE SALVIO: We will have determined -- This is
14 just to clarify an issue. We will have determined by the end
15 of the month whether -- which ones are complete and which
16 ones are incomplete and have notified the applicants
17 accordingly detailing what additional information we need.
18 Yes, we're confident of that.

19 HEARING OFFICER VALKOSKY: Okay.

20 MS. SHAPIRO: But then let's say you found five of
21 them complete. Then you do analyses for some period that we
22 haven't estimated yet.

23 MR. DE SALVIO: I believe -- Oscar may be able to
24 help me. I think it's a 30 day period we're required to -- I
25 think we have at least -- We are required by our rules no

1 more than 30 days later to then either issue or notify the
2 applicant that we need further information to complete the
3 analysis.

4 MS. SHAPIRO: And then do you go out for the 30
5 days comment after that or does that include --

6 MR. DE SALVIO: The 30 day public comment period is
7 triggered by our finding of completeness and proposed
8 issuance of the ERC's.

9 MS. SHAPIRO: Okay. Okay.

10 MR. DE SALVIO: All of which -- That action
11 basically requires all the blanks to be filled prior to that.

12 MS. SHAPIRO: Thank you.

13 COMMISSIONER SHARPLESS: How long have you had your
14 banking rule?

15 MR. DE SALVIO: Since '94, approximately.

16 COMMISSIONER SHARPLESS: And how many applications
17 have you had to the bank? Are these the first 11?

18 MR. DE SALVIO: These are the -- We have had 11
19 applications, basically, beginning with the adoption of that
20 rule. None have been acted on except for one just recently.

21 COMMISSIONER SHARPLESS: So since 1994 these are
22 the only 11 applications that you have gotten for the bank?

23 MR. DE SALVIO: Correct.

24 COMMISSIONER SHARPLESS: And when did they come in?
25 I'm just curious.

1 MR. DE SALVIO: Since '94 they have been scattered.
2 I believe we can provide this information to the CEC,
3 certainly in definitive terms. We received a large group in
4 June of 1996.

5 COMMISSIONER SHARPLESS: Okay.

6 MR. DE SALVIO: There was an application deadline
7 for certain actions in '96.

8 COMMISSIONER SHARPLESS: Okay. Well, I want to
9 thank you for coming up this way and giving us that
10 information. It helps us know what our expectations might be
11 in scheduling. I certainly would hope that the process moves
12 as expeditiously as possible. I think you know why.

13 MR. DE SALVIO: We agree.

14 COMMISSIONER SHARPLESS: Okay, thank you. Staff,
15 what do you have to say about Air Quality today?

16 MR. BUELL: Well, first I would like to say that
17 staff went and checked on the water modeling data that we had
18 identified earlier as being missing and stand corrected, the
19 information was provided on March 31st. I believe that's the
20 right date. So for the record I clarify that point.

21 COMMISSIONER SHARPLESS: Good.

22 MR. BUELL: Regarding the information that
23 Mr. Wolfinger provided earlier. We are in concurrence.
24 There is data that is still outstanding on the Siemens
25 turbine and also on the Westinghouse 501-G.

1 The other bit of information that staff would point
2 out as being missing at this point is the applicant had
3 provided a revised Air Quality Impact Analysis as part of the
4 submittal on May 12th that identified impacts from the
5 project. What was missing with that submittal was the input
6 and output files that would be necessary for staff to
7 understand the modeling analysis that was conducted. If that
8 would be provided we could conclude that that information is
9 complete.

10 COMMISSIONER SHARPLESS: Okay.

11 MR. WOLFINGER: Is this for the one -- I'm sorry.
12 Is this for the one -- Is this for this one hour NO_x and the
13 one hour and eight hour CO impact analysis? Is that -- Is
14 that the files you're looking for?

15 MR. BUELL: Yes, yes.

16 MR. WOLFINGER: Okay.

17 COMMISSIONER SHARPLESS: Maybe I can ask staff.
18 Staff, are you going to cover the PDOC? What are your next
19 steps with the PDOC? Wait until the final DOC comes?

20 MR. BUELL: Staff suggested and I believe staff
21 will be working on preparing comments on the Preliminary
22 Determination of Compliance and submitting them within the 30
23 day comment period that the District has identified. We'll
24 be doing that by June 19th. I think that's the date the
25 District requested comments back.

1 COMMISSIONER SHARPLESS: And what are you looking
2 for, in terms of, what kinds of issues would you be
3 commenting on? What our CEQA requirements would require of
4 us in our analysis?

5 MR. BUELL: That and trying to gain a better
6 understanding of what the basis was for the district's
7 conclusions about compliance with LORS so that we understand
8 that fully.

9 COMMISSIONER SHARPLESS: Okay, great. ERC's. Do
10 you have any comments on the ERC's?

11 MR. BUELL: Not at this time. Nothing new to add.

12 COMMISSIONER SHARPLESS: Okay. I have a question
13 of you, though. Did you in your schedule calculate in the
14 amount of time that it might take to process these
15 applications?

16 MR. BUELL: Our schedule --

17 COMMISSIONER SHARPLESS: In your status report. I
18 can't remember. I think it was your May 15th report where
19 you have a schedule.

20 MS. SHAPIRO: Yes, it is the May 15th report.

21 MR. BUELL: What that schedule identifies is that
22 the applicant needs to provide the letters of intent for
23 those emission offsets by June 15th as the applicant had
24 indicated. As far as the time it would take to actually bank
25 those ERC's, staff had not included that in our schedule as a

1 mandatory or a performance date that needed to be met by any
2 party.

3 COMMISSIONER SHARPLESS: Okay. Is there anything
4 else you would like to say regarding the ERC's and the
5 scheduling, Mr. Wolfinger?

6 MR. WOLFINGER: No.

7 COMMISSIONER SHARPLESS: Done the best you can.
8 Okay, Mr. Joseph.

9 MR. JOSEPH: Thank you, Commissioner. With respect
10 to ERC's, I feel like I'm sort of sounding like a broken
11 record, but I realize that phrase may become increasingly
12 dated. You know, we still have nothing but promises of
13 future performance. And we have an expectation that we'll
14 get letters of intent two months after the Commission's four
15 month grace period. Whether it will or will not happen by
16 that date, I don't know. I think the key for the Commission
17 in responding to that is to adopt the staff's proposal of a
18 performance-based schedule so that if it happens then things
19 move forward and if not then there are consequences to the
20 failure to meet the obligation to keep the dates.

21 I think it will be important to see what the air
22 district does with the ERC applications. To see whether and
23 under what circumstances ERC's are actually banked and
24 whether the letters of intent are letters of intent for ERC's
25 that will truly exist. We're going to have to be able to

1 analyze whether those ERC's will be mitigation for the
2 project and what the secondary impacts will be.

3 With respect to the preliminary DOC: I have not
4 yet seen it, I assume it is sitting in my in-basket back in
5 my office. But given the likely controversy over the
6 contents we agree with the staff that it is important to have
7 the final DOC before the FSA.

8 I also would note that with the applicant's change
9 from a 4 ppm NO_x level to a 3 ppm NO_x level for steady-state
10 operations it would be my assumption that that will require
11 increased use of ammonia. That greater volumes of ammonia
12 will be required to make that take place. So that will
13 trigger changes to the information on the amount of ammonia
14 transport and perhaps ammonia storage. So it would seem to
15 me that those are pieces of information which need to be
16 updated if the hypothesis is correct that using SCR to get
17 lower emissions requires greater amounts of ammonia.

18 COMMISSIONER SHARPLESS: Would you care to comment
19 on your comment about EPA's review of the prevention of
20 significant deterioration application? You had something in
21 your letters that said you were not aware of any development
22 regarding EPA's review. Have you any more current
23 information since you wrote that?

24 MR. JOSEPH: No, since I wrote that I have not
25 heard anything else. So far it has been marginally, at least

1 publicly silent.

2 COMMISSIONER SHARPLESS: Can I ask staff? Staff,
3 are you dealing with that issue? USEPA's prevention of
4 significant deterioration application.

5 MR. BUELL: We have been in contact with EPA. And
6 Mr. Tuan, do you have anything that you would like to add
7 about the status of that? This is Tuan Ngo of our staff.

8 MR. TUAN: We met with the EPA staff about two
9 weeks ago and we asked them about the status of the PSD
10 application. The answer from the EPA staff was they still
11 working on it. Nothing substantial in terms of working on
12 the application since the day they have been deemed complete.

13 COMMISSIONER SHARPLESS: And what is our position
14 on meeting USEPA's determination on PSD?

15 MR. BUELL: I think one point is that earlier we
16 had talked about PSD being delegated to local districts. In
17 this case PSD applications have not been delegated to the
18 Mojave District so we actually need an action by USEPA on
19 this project. In many cases we have deferred the actual PSD,
20 obtaining a PSD permit until after certification.

21 COMMISSIONER SHARPLESS: But in those cases you
22 said it was because of the delegation issue.

23 MR. BUELL: No, those cases were actually prior to
24 there being delegation. It was the normal practice that EPA
25 would issue a permit post our certification process.

1 COMMISSIONER SHARPLESS: And what is the rationale
2 that we use to allow it to be submitted after the
3 certification process?

4 MR. BUELL: I think it was Caryn who had indicated
5 earlier we had reached a conclusion based upon all the
6 discussions with EPA and our understanding of the issues that
7 a project presented that it was likely -- a project was
8 likely to comply with PSD requirements. And we made that
9 finding or staff made that finding and recommendation to the
10 Committee and their decision on the project was based upon
11 that understanding, that the project was likely to comply.

12 COMMISSIONER SHARPLESS: And is that based on what
13 the district might do in order to meet its requirements?
14 BACT and threshold and emission reduction credits, do those
15 two things tie together?

16 MR. BUELL: That's a separate item. That would be
17 under new source review rules. PSD was the increment
18 consumption and the application of federal BACT requirements.

19 MS. HOUGH: Typically what's happened is that the
20 EPA has given us indication, I think in many instances in
21 writing, that they expect that the project will comply. But
22 there may be a significant period of time before they
23 actually issue the piece of paper that says, this is a PSD
24 permit.

25 COMMISSIONER SHARPLESS: Caryn, can they do that

1 before the Final Staff Assessment?

2 MS. HOUGH: I don't know what their schedule is for
3 completing PSD permits.

4 COMMISSIONER SHARPLESS: Do we know what their
5 schedule is?

6 MR. TUAN: They won't be -- The final approval from
7 the PSD permit won't be finished until sometime probably
8 March 1999.

9 COMMISSIONER SHARPLESS: No, but we are not talking
10 about the final permit, we're talking about an indication.

11 MR. TUAN: From what they -- From discussion with
12 EPA staff the only thing what they want to do was to comment
13 on the DOC and incorporate all their comments into the DOC,
14 into the preliminary DOC. So that by the time they go into
15 the PSD application they don't have that much a problem.

16 COMMISSIONER SHARPLESS: Okay. So during the -- We
17 can assume that the comments that USEPA makes on the PDOC --

18 MR. TUAN: Yes.

19 COMMISSIONER SHARPLESS: -- will reflect where they
20 are going, even to the extent of the PSD.

21 MS. HOUGH: I think it's if USEPA makes comments on
22 the PDOC and the District incorporates the comments and
23 recommendations.

24 COMMISSIONER SHARPLESS: Right, right.

25 MS. HOUGH: Right.

1 COMMISSIONER SHARPLESS: Okay.

2 MR. CARROLL: That is, by the way, consistent. We
3 also have met with Region 9 to talk about this issue and
4 that's very consistent with what we were told. That they
5 intend to minimize their own resource consumption and rely on
6 the PDOC process. And assuming that that is all completed
7 and in place then it would pave the way for them to issue the
8 PSD permit.

9 COMMISSIONER SHARPLESS: Okay. Any other questions
10 on Air Quality? Okay. I think we sort of know where we
11 stand on that issue.

12 **SCHEDULE**

13 Mr. Valkosky, that now brings us down to the
14 section on the agenda where we were going to review the
15 schedule. Would you like to help the Committee, lead through
16 the schedule discussion, please.

17 MR. JOSEPH: You're giving him the fun part, right?

18 COMMISSIONER SHARPLESS: Well, It's kind of
19 interesting because when you all look at what is required I
20 have noticed that even our own wonderful staff leaves the
21 Committee less and less time to render its own final
22 decision. So we have a Committee perspective that hasn't
23 necessarily been reflected by the discussion and Stan is in a
24 fairly good position to know what that means to us.

25 MR. THOMPSON: And he's leaving.

1 COMMISSIONER SHARPLESS: He ain't no dummy.

2 HEARING OFFICER VALKOSKY: In examining the various
3 elements of the schedule and the scheduling proposals that
4 have been contained in the parties' filings the Committee has
5 attempted to work out a schedule, one with an expected due
6 date of December 2nd which is the 12 month date, and then the
7 various alternatives. Fundamentally, the Committee has
8 concluded that based on a lot of the factors that are
9 outstanding and a lot of the steps which you have to take
10 before it can achieve a date that frankly it is unclear how
11 we get to a decision date from here, especially a December
12 2nd decision date.

13 The document that I have just handed out, the High
14 Desert Schedule, lists approximately 30 steps which from the
15 Committee's perspective are necessary. The dates reflected
16 are based on the most recent filings of the parties. You
17 will notice that there's only a half-dozen or so dates that
18 are filled in, the rest of the dates are intentionally left
19 blank. The elements reflected on the left hand side of the
20 paper in many cases contain either required intervals or
21 typical intervals that are applicable to each of the
22 elements.

23 This schedule, this document is not intended to be
24 all-inclusive. You will notice, for example, things that
25 typically happen like staff workshops are not included in it.

1 There is a number of elements which were discussed today
2 which may be lacking because we weren't really aware of it
3 when these were -- when this document was devised.

4 What I would like the parties to do--I'm not
5 suggesting we do it now, I think it would probably be done
6 better in an informal discussion--is basically fill in the
7 blanks. You have got the elements here. If you take
8 exception to any of the elements I think you should indicate
9 that. If there are other elements that in your view based on
10 discussions today should be added, feel free to add them.

11 What the Committee is interested in at this point
12 is getting input from the parties at a detailed level using
13 this High Desert Schedule Draft as a work sheet so that the
14 Committee can then evaluate the input of the parties and come
15 out with a schedule, at least through the FSA, in the near
16 future. Are there any questions on this?

17 COMMISSIONER SHARPLESS: I think the one thing that
18 you may have left out, Stan, was in combination with the
19 issue about a continuation workshop tomorrow. We were
20 thinking that this might be a good time for the parties to
21 get together. Okay. What Stan is saying is that the
22 applicant has thought about perhaps trying to move that up to
23 today. I was going with what staff was suggesting, that
24 there be a continuation for tomorrow of a workshop nature
25 where parties get together and try to, as Stan said, fill in

1 the blanks.

2 What we're really trying to do here is be
3 realistic. I emphasize, realistic. And what we hope this
4 will do is to point toward an issue that we brought up at our
5 last conference and still is under consideration. And that
6 is a performance-based schedule where dates are established
7 and if dates are missed then there is a slippage based on
8 dates missed. I don't know how else we work this given where
9 we are today with the schedule.

10 We want to give the parties adequate time to talk
11 about this; we want to give the parties adequate time to
12 think about what the schedule means to their participation.
13 And as a Committee we want to make sure that unlike the
14 staff's schedule, the Committee gets adequate time as well to
15 write its Decision draft, Mr. Buell. So that has to be taken
16 into consideration as well.

17 So I would like to open it up right now and have
18 people sort of react to the idea that this be discussed.
19 Actually I'm encouraging and suggesting that it be discussed.
20 But when it is discussed, whether it is tomorrow or whether
21 it is today or when it is, is really up to those of you who
22 are sitting around this table.

23 MR. THOMPSON: Given your comment to Mr. Buell I'm
24 glad I didn't show you my schedule.

25 COMMISSIONER SHARPLESS: What did you give us,

1 seven days or something?

2 MR. THOMPSON: Well, we basically thought we would
3 write it for you. No, there wasn't much time there. We
4 appreciate this effort and will take this and work with it,
5 we would like to discuss it tomorrow.

6 When we mentioned a continuing workshop this
7 afternoon it was under the understanding that Marc Sazaki may
8 be available in Biology. Since we have Amy Cuellar here it
9 may be a good time to adjourn this format and get with staff
10 and tell them what we're doing, show them the maps we have,
11 et cetera, et cetera, et cetera.

12 But we will take this schedule and we appreciate
13 the effort that Stan Valkosky has done here and we will be
14 prepared to talk about it tomorrow morning.

15 MR. BUELL: Staff is willing to talk about it this
16 afternoon if the applicant is willing to talk about it this
17 afternoon. I don't think all afternoon would be taken up
18 with our discussions with Marc Sazaki so that's another
19 option.

20 COMMISSIONER SHARPLESS: Was it not your
21 suggestion, Mr. Buell, that there be a continuation until
22 tomorrow? Are you changing your view now?

23 MR. BUELL: I guess staff had requested or
24 identified -- had requested a continuation until tomorrow
25 simply because I wasn't sure how long this hearing was going

1 to last today. And if the opportunity presented to have the
2 discussions today then certainly I think we ought to take
3 that opportunity. All the parties are here. It might save
4 others other important meetings that they have to go to.
5 Caryn Hough just informed me she wasn't going to be here
6 tomorrow morning.

7 COMMISSIONER SHARPLESS: Okay.

8 MR. JOSEPH: That's certainly my preference as one
9 of the out-of-towners. I think it's one thing we share in
10 common is to see if we can get as much done today as
11 possible.

12 COMMISSIONER SHARPLESS: Fine.

13 MR. JOSEPH: Possibly avoid a trip back tomorrow.

14 COMMISSIONER SHARPLESS: That's fine with me. It's
15 really just a suggestion. I know that staff -- I thought
16 staff had more that they wanted to talk about in a
17 continuation meeting than just the schedule but it may have
18 been this Biology issue. I know that you have workshops
19 scheduled for next week in Victorville, I know that. There's
20 like three solid days, one with the Victor Valley Water
21 District and then two with the staff on the preliminary DOC
22 and perhaps some other issues. I wasn't quite sure what they
23 all cover, although I signed the Order to do so.

24 MR. WOLFINGER: I would like to just say that I
25 would like to have the meeting go into tomorrow, I have got a

1 lot of things to discuss. I mean, one of the things I have
2 been very frustrated in this process is that I haven't been
3 allowed to call meetings and talk to people. I mean, I have
4 asked a number of times. It seems though as I as the
5 applicant don't matter. I mean, I'm the one that asks for
6 them, I asked Stan, and I'm the one that wants the time.

7 COMMISSIONER SHARPLESS: Okay.

8 MR. WOLFINGER: I would like to just say, I would
9 like to have the time. Although maybe other people don't
10 want to take the time I specifically asked for the time and I
11 would like to take it.

12 COMMISSIONER SHARPLESS: Well, I think that staff
13 in their status report said that they would be happy to offer
14 that time to the applicant.

15 MR. WOLFINGER: Good.

16 COMMISSIONER SHARPLESS: We are talking about a
17 continuation in a different format.

18 MR. WOLFINGER: Yes. Great.

19 COMMISSIONER SHARPLESS: It's a workshop format as
20 opposed to a Committee Conference to work out some of these
21 issues that I think you all want to do.

22 MR. WOLFINGER: Thank you.

23 COMMISSIONER SHARPLESS: It's not that your letter
24 has been ignored, we received your letter, but there are
25 quite a few workshops that have been set up. At this point

1 it looks as though if there are more conferences that will be
2 needed we need to know what they would be about before we
3 agree to have something like every two weeks. So I will
4 leave it up to the parties. If you want to continue after we
5 adjourn this meeting today, that's fine with us, is it not?
6 Do I need to sign something, Stan, as usual, to paste it on
7 the door?

8 HEARING OFFICER VALKOSKY: As usual, you're
9 correct. You can sign a Notice of Continuation for tomorrow.
10 The Notice will read 9 a.m. to 4 a.m. (sic), Office Building
11 8, Room 217, 714 P Street.

12 COMMISSIONER SHARPLESS: What is that?

13 MR. THOMPSON: I won't be here until 4 a.m.

14 MS. HOUGH: Is there a problem with continuing it
15 this afternoon then tomorrow if we need to go on to tomorrow?

16 COMMISSIONER SHARPLESS: No, I have just given you
17 the option. I will --

18 HEARING OFFICER VALKOSKY: There is no problem.

19 MS. HOUGH: It seems like it was presented as an
20 either/or.

21 COMMISSIONER SHARPLESS: No, I am going to sign the
22 notice, we'll paste it on the door.

23 MS. HOUGH: Okay.

24 COMMISSIONER SHARPLESS: If you guys don't need it
25 we'll just put a Cancel across it. This is just a

1 contingency plan for you all and allow you whatever time you
2 need.

3 I guess the next issue then, Stan, would be, once
4 the parties talk about the schedule and fill in the blanks
5 and talk about the reality of when things can be done and
6 what needs to be done this would come back to the Committee
7 for the Committee to consider. The Committee might want to
8 do its own input into this proposal. Once we see your
9 reality we'll look at our reality. We will come out with a
10 Committee Order on the schedule; is that right?

11 HEARING OFFICER VALKOSKY: That's correct.

12 COMMISSIONER SHARPLESS: That would be within two
13 weeks or so?

14 HEARING OFFICER VALKOSKY: I think it will be
15 quicker than that if we get timely response from the parties.
16 And I would suggest, is there any difficulty in setting a
17 report-back date on Tuesday the 26th? Is that too short of a
18 time frame?

19 MR. JOSEPH: I would inquire as to what form you
20 want the report-back in. There is a possibility we will all
21 agree on the schedule but there is a possibility we won't.

22 HEARING OFFICER VALKOSKY: I don't anticipate that
23 you will all agree on every element of the schedule. If you
24 agree, fine, fine. What I am interested in is each party's
25 reaction to the list of items and that is really it. To the

1 extent that they agree, again, that's fine. To the extent
2 there is elements that you want to add or subtract, that's
3 fine too. What I want is your response to the document that
4 I handed you.

5 COMMISSIONER SHARPLESS: Although I would encourage
6 that they try to work on agreement.

7 HEARING OFFICER VALKOSKY: I definitely encourage,
8 yes. Definitely encourage agreement, but again, it is not a
9 condition of it. So really, that's it. Can you get back to
10 the Committee by Tuesday, the 26th is that?

11 MR. WOLFINGER: We can as the applicant.

12 HEARING OFFICER VALKOSKY: Mr. Buell?

13 MR. BUELL: I have some questions I would like to
14 ask the Committee about guidance on what criteria they are
15 looking for in the schedule. I see no reason why we can't
16 meet that date.

17 HEARING OFFICER VALKOSKY: Okay, what are your
18 questions?

19 MR. BUELL: Are you directing the parties to come
20 up with a schedule that has a decision by December 2nd of
21 this year?

22 HEARING OFFICER VALKOSKY: No. Not necessarily,
23 let me put it that way.

24 MR. BUELL: How strongly does the Committee feel
25 about the issuance of a complete PSA?

1 HEARING OFFICER VALKOSKY: That's one of the items
2 I think that is subject to discussion among the parties.

3 MR. BUELL: Okay. How much time does the Committee
4 want to prepare a Presiding Member's Report?

5 HEARING OFFICER VALKOSKY: If you'll notice it
6 says, in a contested case, such as we anticipate this to be
7 with multiple adjudicated issues, 60 days would be typical.
8 That's guidance.

9 MR. BUELL: Okay, thank you.

10 HEARING OFFICER VALKOSKY: Obviously, if it's 55
11 days that is negotiable, if it's 20 days you are out of the
12 ballpark. Okay?

13 MR. BUELL: Okay.

14 COMMISSIONER SHARPLESS: And if you're expecting us
15 to write it on Christmas, forget it, it ain't going to
16 happen.

17 MR. BUELL: And the schedule that you want only
18 goes through the FSA?

19 HEARING OFFICER VALKOSKY: No, no, I want it
20 through the balance of the proceeding. I mentioned FSA
21 because at the present time the Committee would desire to
22 issue a Scheduling Order that could go through the issuance
23 of the FSA. Again, that's subject to change, I want to
24 emphasize that. But that would be the next major document.
25 Anything else? Mr. Joseph.

1 MR. JOSEPH: Noting that Monday is Memorial Day,
2 Tuesday would be fine so long as you accept a fax filing.
3 Because otherwise it means sending it out by Friday.

4 HEARING OFFICER VALKOSKY: Fax filing is fine.

5 MR. JOSEPH: Thank you.

6 HEARING OFFICER VALKOSKY: That would be followed
7 up with a hard copy to the Docket --

8 MR. JOSEPH: Correct.

9 HEARING OFFICER VALKOSKY: Yes, that's no problem.

10 COMMISSIONER SHARPLESS: Any other questions?
11 Okay. Commissioner Laurie, for the good of the company shall
12 we adjourn?

13 COMMISSIONER LAURIE: Good idea.

14 COMMISSIONER SHARPLESS: Any other issues that we
15 need to cover? We talked about schedule continuation. Okay.
16 Well, we will adjourn the Committee Conference and you may
17 carry on. I thank you again.

18 MR. THOMPSON: Thank you.

19 (Thereupon the meeting was
20 concluded at 2:11 p.m.)

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CERTIFICATE OF TRANSCRIPT

I, Ramona Cota, as the Official Transcriber, hereby
certify that the attached proceedings before Chief Hearing
Officer Valkosky, California Energy Commission,

In the Matter of:)	Docket No. 97-AFC-1
)	
Application for Certification)	
for the High Desert Power Project)	
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were held as herein appears and that this is the original
transcript thereof and that the statements that appear in
this transcript were transcribed by me to the best of my
ability.

I further certify that this transcript is a true,
complete, and accurate record of the proceeding.

Ramona Cota
May 30, 1998
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